Soviet power in Asia. Beijing has opted for a gradual and measured modernization of its military forces. That is wise and proper. In specific instances, however, we may wish to make available selected technologies so that China neither falls further behind the Soviets nor is forced to cloak its deficiencies behind a facade of xenophobic self-reliance.

In the words of Thomas Jefferson, let us seek today in Asia, as we did at our founding 200 years ago, "equal and exact justice for all men, of whatever state or persuasion . . . and peace commerce and honest friendship with all nations."

Thank you.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES ACT

The PRESIDING OFFICER (Mr. STEVENS). Under the previous order, the Senate will now resume consideration of S. 734 which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 734) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of Alaska, suggests the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, I see that Senator PROXMIRE, my colleague on the Banking Committee, my distinguished ranking minority member, was not only on his way but is now present.

Mr. PROXMIRE. Right.

Mr. HEINZ. I would like to take this opportunity to make a brief opening statement.

Let me state at the outset, Mr. President, that this will be brief as the Senate has faced these issues before, and I believe most Senators are prepared to move forward on S. 734.

The bill before us today, S. 734, is an original bill reported from the Banking Committee incorporating some minor changes the committee made in S. 144, the basic export trading company legislation which Senators DANFORTH, BENTSEN, TSONGAS, and I introduced on January 19. That bill presently has 63 cosponsors, including a majority of Senators in both parties.

On March 23 I placed in the RECORD a summary of the substantive changes the committee made in S. 144. I ask unanimous consent, Mr. President, that that summary be printed at the conclusion of my opening remarks today.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HEINZ. None of the changes in question alters the basic provisions of this legislation.

Mr. President, this bill, which is essentially the same as legislation which passed the Senate unanimously last year, is a concrete effort to translate into action an objective we all share; namely, improving our Nation's export picture. That this is an objective worth achieving is no longer in dispute.

Although the ratio of exports to GNP rose from 4.2 percent in 1972 to 7.5 percent in 1979, U.S. imports, led by massive increases in the cost of oil, grew equally as fast, increasing in importance relative to GNP from 5.1 percent to 8.7 percent in the same years. Because imports have expanded since 1972 from a higher base than exports, the trade deficit has expanded sharply, with an aggregate deficit over the past 5 years exceeding $105 billion.

Because of their superior international competitiveness in manufactured goods, our major trade competitors have been able to offset their imported energy bills much better than the United States. According to a study done by the National Association of Manufacturers last year, imports of manufactured goods increased nearly four times as fast as exports since 1970, with that margin growing in the last half of the decade. The study further concluded that our industrial competitiveness is declining measured both by increased import penetration here and loss of export markets elsewhere.

The U.S. share of world markets declined from 21.3 percent to 17.4 percent over the past 10 years, the largest relative decline among major industrial exporters. We have lost market share in 8 of the 9 EC countries and 12 of the 13 OPEC countries. While our manufactured goods trade has stayed in rough balance, Japan and West Germany in 1979 had surpluses of $70 billion and $60 billion respectively. The study concludes:

Because of worsening terms of trade, the U.S. has to run faster, in terms of export volume, to say in the same place. . . . Improving the U.S. trade account by further depreciation of the dollar (which increases inflation) and/or by restraining U.S. growth (which increases unemployment) are very unattractive long-term policy options.

Obviously, that trend is not going to be reversed overnight. But every successful program of trade promotion is a step in the right direction. Small- and medium-sized businesses have too long been excluded from a significant role in our Nation's export picture.

In an effort to do something about our deteriorating export performance, my predecessor as chairman of the Subcommittee on International Finance and Monetary Policy, former Senator Stevenson, and I initiated an extended series of hearings in 1978 on export policy and performance.

Out of those hearings grew this legislation, based on a realization that substantial numbers of small- and medium-sized businesses, 20,000 in the Commerce Department's estimate, could export but did not. In investigating this, the committee concluded that small businesses were deterred from exporting both by their traditional focus on domestic markets and by serious barriers—real and perceived—to exporting in the form of different customs rules, licensing standards and languages, unfamiliar marketing practices, and financing difficulties. In short, the small businessman has, not surprisingly, found foreign marketing alien and confusing, and therefore has avoided it.

One way to surmount these barriers is through export trading companies—service-providing companies that will perform some or all of the functions that intimidate small businessmen. In its most advanced form, the export trading company might simply buy the goods from the domestic source and resell them abroad itself, assuming all the risk and responsibility. In a more limited form, the export trading company might provide marketing advice—to the point of finding a market and helping arrange a purchase—for a fee, leaving the seller on his own to complete the transaction.

An export trading company, of course, could also provide a wide range of other services in that case, helping to obtain necessary Government licenses and approvals, finance, and ultimately ship the product. There are an infinite number of scenarios, but they all revolve around the same theme—removing some or all of the risk and unfamiliarity of foreign marketing from the domestic businessman.

In looking at why such service-providing organizations do not exist now in adequate numbers, we concluded that there are two primary problems which could be addressed through legislation—undercapitalization and antitrust uncertainties. A third area, a need for adequate tax incentives, will be the subject of another bill we will shortly introduce. The first two problems are addressed in the legislation before us today.

In brief, S. 734 deals with the capital problem by providing for limited bank investment in export trading companies. Because it is not our intent simply to permit banks to move unrestricted into certain kinds of commercial activities, the bill narrowly limits the scope of bank involvement, particularly with respect to bank control of a trading company, which in every case would have to be approved by the appropriate bank regulatory agency.

Beyond the basic statutory limit of 5 percent of the bank's capital which could be invested in the export trading company, S. 734 contains numerous other restrictions to protect the safety, soundness, and integrity of banks involved with trading companies.

The report on the bill lists these limitations in detail, Mr. President, and I ask unanimous consent that that list be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

(1) The bill prohibits banking organizations from making loans to any export trad-

ing company in which the banking organization holds any interest whatsoever, and to any customers of such company, "on terms more favorable than those afforded similar borrowers in similar circumstances" or involving "more than the normal risk of repayment" or presenting "other unfavorable features." Thus, banking organizations would be barred from making preferential or unusually risky loans to export trading companies or their customers.

(2) The appropriate Federal banking agency may require divestiture or impose conditions on a banking organization's investment in an export trading company if the export trading company "takes positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of its business operations." That is, purely speculative activities are forbidden for any trading company controlled by a banking organization.

(3) The bill prohibits a trading company with a banking organization investor from engaging in "manufacturing or agricultural production activities" and permits it to engage in underwriting, selling, or distributing securities only to the extent its bank investor may do so under applicable Federal and State laws and regulations.

(4) The bill empowers the Federal banking agencies (the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board for Federal savings banks) when acting on a banking organization's application to take a controlling interest in an export trading company, to impose any conditions they deem necessary—

(A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices.

(5) The bill authorizes the Federal financial institutions regulatory agencies to establish standards with respect to the taking of title to goods by any export trading company subsidiary of a banking organization, standards "designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. Such standards may specifically include inventory-to-capital ratios.

(6) The bill would bar any banking organization from taking a controlling interest or making any investment over $10 million in any export trading company without receiving the prior approval of the appropriate Federal banking agency. The Federal agency would be required to disapprove any application for which it finds—

That the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the particular investment.

(7) The bill would prohibit aggregate investments by any banking organization of more than 5 percent of its consolidated capital and surplus in one or more export trading companies.

(8) The bill would prohibit the total historical cost of a banking organization's direct and indirect investments in a trading company combined with extensions of credit by such organization and its subsidiaries from exceeding 10 percent of the banking organization's consolidated capital and surplus.

(9) The bill would allow the appropriate Federal banking agency—

Whenever it has reasonable cause to believe that the ownership or control of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the banking organization . . . to terminate . . . its investment in the export trading company.

(10) The bill requires that any banking organization investment, even if it is less than $10 million, be reported to the appropriate Federal banking agency. After receiving such notification, the agency could disapprove the investment or impose conditions on it if the agency determined that the trading company was a subsidiary of the banking organization investor.

(11) A banking organization also must report each additional investment in a trading company subsidiary or the engagement by a trading company subsidiary in any new line of activity, such as taking title to goods, which was not included in any prior application for approval of banking organization control of the trading company. The Federal banking agency could disapprove the proposed investment or new activity under the same standards applicable to controlling investments.

(12) The bill prohibits a trading company from having a name similar to that of its bank organization investor unless the bank organization owns a majority equity interest in the trading company.

The Committee is supported in its view that the bill contains appropriate Federal regulatory authority over bank investments in export trading companies by the Administration, by the Comptroller of the Currency, and (with one exception) by the Federal Reserve Board. The sole exception is the Board's view that Federal bank regulatory agencies should not be authorized to approve any controlling investments by banks in export trading companies with the possible exception of certain "ingle-purpose" trading companies. Specifically, the Board would prohibit any one banking organization from acquiring 20 percent or more of any export trading company and any group of banking organizations from acquiring more than 50 percent of a trading company. The Board would accept non-controlling investments, subject to the provisions contained in the bill. The Board appears to question the ability, as well as the propriety, of permitting banks, either singly or as a group to manage export trading companies.

Mr. HEINZ. In my judgment, this is an overly conservative approach designed to calm unrealistic fears. However, the bill is the product, Mr. President, of a good deal of compromise—compromise with two administrations, compromise with bank regulatory agencies, and compromise with numerous Senators, and, as one who has been intimately involved in those negotiations and compromises, I can say they are compromises I am prepared to support. I do not, however, feel there is much more room for compromise if we are to have a bill that has any meaning.

With respect to the antitrust issue, the bill makes a procedural reform in the existing Webb-Pomerene Act by permitting the issuance of a certificate providing an antitrust immunity for the activities specified in the certificate for the period of time the certificate is in effect. The language of this title does not modify substantive antitrust law. My colleague, Senator DANFORTH, the author of title II, will have more to say about this shortly.

Mr. President, I would also like to make a brief point about one issue in the bill that has come up recently.

Nothing in the bill is intended as an override of existing State authority over State-chartered institutions. Limitations which now exist by force of individual State statutes or regulations that would affect the ability of State-chartered banks to take equity positions in export trading companies are not preempted. Furthermore, because no override of existing State regulatory authority is intended, nothing in the bill can be construed as preventing States from adopting laws or promulgating regulations which would prohibit, condition, limit, or restrict investments by banks chartered under the laws of any State. That is the intent of section 105(a) of the bill.

To the extent that State-chartered institutions are not prohibited by State statute or regulation from taking any equity position in an export trading company within the meaning of this bill, section 105(b)(1)(B) is not intended to create an exclusive approval right in the appropriate Federal banking agency where a controlling interest is to be acquired, nor is section 105(b)(1)(A) intended to preclude the requirement of State approval for the taking of less than a controlling interest. It is not intended that this bill interfere in any way with the present role of the State banking department as the primary regulator of State-chartered institutions.

I believe the manager for the minority, my distinguished colleague from Wisconsin(Mr. PROXMIRE) may have some comments on the bill and possibly some amendments to it. I will have more, much more, to say about his amendments later, but before I yield to him, I want to express my appreciation for the role he has played throughout the committee's consideration of this bill. I know the Senator from Wisconsin has some reservations about some aspects of the bill, but I think the record should also reflect his consistent cooperation in moving the bill along through the legislative process. I am also indebted to him for raising, in a reasonable and constructive fashion, some basic issues surrounding this bill relating to the role of banks and the antitrust certification procedures. I do not agree with the Senator, and I hope no one else will either, but I think he has raised the right issues and thereby contributed to their resolution in a constructive manner that exemplifies the tradition of this body.

Mr. President, I reserve the remainder of my time.

EXHIBIT 1

THE EXPORT TRADING COMPANY ACT OF 1981

● Mr. HEINZ. Mr. President, on Thursday, March 12, the Committee on Banking, Housing, and Urban Affairs marked up S. 144, the Export Trading Company Act of 1981, and ordered reported an original bill embodying the amendments to S. 144 approved by the committee. The committee report, along with the original bill, S. 734, were filed March 18.

In its markup, the committee did not change the basic provisions of S. 144, but it did adopt 24 amendments, most of them technical, a few of which make substantive changes in particular parts of the bill. For those who have been following this legislation closely, I would like to list briefly the more substantive changes in S. 144 made by the committee.

First. The committee reduced the amount of money authorized in section 106 of the bill for EDA and SBA loans and loan guarantees from $20 million per year to $10 million per year for 5 years.

Second. The committee added a new section 108, proposed by Senator RIEGLE, creating a program which would help small businesses not previously significantly involved in exporting hire an export manager by providing for Federal payment of half the manager's salary for the first year. The cost of this amendment is $2 million per year for 3 years. It is the same amendment which the Senate adopted on the floor last year in its consideration of S. 2718, the predecessor of S. 144.

Third. The committee adopted two amendments initially proposed by Senator CHAFEE which would: (a) Permit a trading company to have the same name as its banking organization investor if the latter owns a majority of the stock of the trading company; and (b) provide the bank regulatory agencies greater flexibility in dealing with violations of section 105(c)(3) of the bill relating to taking positions in commodities, securities or foreign exchange. Both these amendments were recommended by the Comptroller of the Currency.

Fourth. With respect to title II of the bill, the antitrust provisions the committee agreed to an amendment which would permit existing Webb-Pomerene Associations to continue to operate under current law if they so chose rather than being forced to seek certification under the new system created by this bill. Such associations, of course, would also retain the option of seeking certification under the same standards and procedures applicable to everyone else.

The other amendments, Mr. President, were technical in nature, correcting typographical or reference errors or making other minor changes in language, in most cases at the request of the administration. So that all these changes are clear to everyone concerned, Mr. President, I shall ask that the complete text of S. 734, the original bill reported by the Banking Committee, be printed in the RECORD at the conclusion of my remarks.

Reporting this bill represents another important step in our progress toward enacting this legislation and thereby giving American businesses interested in exporting another set of tools to use to successfully market and sell abroad. The committee held 3 days of hearings on this bill this year, in addition to the many days held in 1979 and 1980, and I anticipate that the printed record of the 1981 hearings will be available to Senators and the public shortly. I am also pleased to see that the House is also moving forward with this legislation, the House Judiciary Committee having scheduled hearings on it and other related measures for March 26. The next step should be Senate floor action, which I hope will come soon.

Mr. PROXMIRE. Mr. President, first let me say a word about the senior Senator from Pennsylvania (Mr. HEINZ), for his perseverence in guiding this legislation to the point where it is today. The Senator from Pennsylvania is a tireless worker on behalf of what he believes in. And make no mistake about it, he believes in exports. S. 734 is the first major bill to be reported out of his International Finance Subcommittee, the subcommittee of which he is the chairman. He deserves the congratulations of the Senate for the expeditious, prompt, and efficient way he has handled this bill in committee and is handling it on the floor.

I say that despite the fact that I have two serious reservations about this bill. Both reservations concern how the substantive powers granted in the bill are to be administered. Despite my reservations, I shall vote for this bill. I know that it has virtually unanimous support in the Senate.

The bill passed the last time 78 to 0.

I fully expect that the House Banking Committee will take a closer look at the banking provisions and that the House Judiciary Committee will take a closer look at the antitrust provisions. By the time this bill gets through the House and then through conference and back to the Senate, I believe it will be a better bill. I am convinced the Senate has gone as far as it can, given the politics of the situation, and therefore I would not try to hold this bill up.

I believe we should seek ways to update our export capability. The goal of this bill is to do just that and I support it. Nevertheless, I think we should all recognize that we do not have an export crisis. Last year we had a favorable balance on current account, a unique position in the industrialized world. That is the true measure of our export-import situation because it takes into account all factors.

People are confused when I say current account. The Senator from Pennsylvania talks about the balance of trade. The current account is the overall balance, including trade, including investment income, services, foreign aid. It includes everything. On that basis, we had a balance and I say that is unique. The only other developing countries that had a balance were, of course, the OPEC countries. They have an enormous advantage because they are selling oil at a very high price. Under those circumstances, I do not think anybody could really argue that we have anything like an export crisis or anything but the proper kind of a situation this country should have, which is a balance, meaning that if other countries had the same, we would have far greater equity in trade throughout the world.

We should not be surprised that one segment of the current account, the merchandise balance, is in deficit. That deficit has to do with the price of oil, which quadrupled in 1974 and doubled again in 1979. We will have to find ways to operate more efficiently, to conserve imported oil, if we are to bring the merchandise account into balance.

All the trading company legislation and export legislation will not solve our problem unless we recognize that the fundamental problem is an energy problem.

One thing is sure. Our situation is not of such a magnitude that we have to throw out the separation of banking and commerce that serves our economy so well. Neither do we have to forego our antitrust laws which have given us the benefit of a free and competitive economy, probably the most competitive economy of any country in the world. That is one of the reasons why we have been the dominant economic country in the free world, and continue to be.

The AFL–CIO, which has as much at stake as anyone else in a healthy economy, opposes this bill. In a statement on the bill the AFL–CIO said:

> The AFL–CIO supports exports that promote U.S. jobs and help create a healthy U.S. industrial base. Many industries, including those that provide services, need and deserve the help of the U.S. Government in an increasingly complicated international trading world.
>
> We do not believe S. 734 will accomplish these objectives and we oppose it.
>
> This bill ends the traditional U.S. legal separation between banking and commerce, a risky move in a world where international banks are already "loaned up" and government insurance of exports is at issue in other hearings. The lender and exporter can become one under this legislation—a damaging change in U.S. law.
>
> At a time when banks and commercial enterprises in the United States are claiming capital shortages, a measure that will result in a further competition for funds and diminution of capital for productive investments is unwarranted.
>
> Title II extends antitrust exemptions of the Webb-Pomerene Act to associations formed for the purposes of exporting services and to export trading companies. Exempting the nation's largest banks and an unidentified number of existing international lawyers, accountants and other so-called service firms will add to the competitive problems of many businesses at home.
>
> What appears to be developed in the bill is a double standard on competition—one for U.S. exporters and another for U.S. producers. The exporters may be giant world companies or banks exempt from U.S. law on antitrust. Trade would be special privilege while all U.S. activities would be subject to competitive laws.

Mr. President, the Conference of State Bank Supervisors (CSBS), which is comprised of the 50 State banking commissioners opposed this bill as an unwarranted intrusion on States rights.

I understand that Senator HEINZ will offer a statement on the floor ameliorating some of their concerns.

Furthermore, the Independent Bankers Association originally opposed this bill as written. The Securities Industry Association and the Independent Insurance Agents also oppose the bill as written.

Why? Because the legislation goes too far. It does not take the care that needs to be taken to continue the benefits of separating banking from commerce and it needlessly puts the antitrust laws in a back seat relationship to trade promotion.

Mr. President, There are two serious defects in this legislation.

One serious defect is that the significant and historical precedent setting power for banking organizations to control up to 100 percent of export trading companies engaged in business and commerce will be administered by three separate bank regulatory agencies. In the past when Congress enacted bank legislation authorizing new activities regulatory authority has been given to the Federal Reserve.

Another serious defect is that the Justice Department and the Federal Trade Commission have been shunted aside as primary antitrust enforcers of the antitrust laws governing foreign commerce from the United States in favor of the Commerce Department whose primary mission is to promote and trumpet trade.

The Secretary of Commerce admitted that they did not have the expertise or competence in his Department to regulate antitrust matters.

Thus this legislation will undoubtedly

result in inconsistent, wasteful, and overlapping bank regulation instead of a consistent and coherent bank regulatory policy; and will result in less competition while prize fixing in domestic and international markets gets a wink from the Commerce Department.

This is major legislation; Major bank legislation and major antitrust legislation. Banking organizations—banks, bank holding companies, and Edge Act international corporations—are given the power to control export trading companies which are permitted to engage in a wide range of export and import activities not only as financiers but as equity participants. An export trading company is permitted to purchase for its own account goods and commodities, warehouse them, and market them overseas through its own retail network. The separation between banking and commerce which has served this Nation well for over 100 years has prohibited such activities by banks.

If we pass this legislation, that separation will be ended with respect to that particular part of banking and commerce.

The Federal Reserve and the Federal Deposit Insurance Corporation, the two regulatory agencies which are responsible for the safety and soundness of our banking system, testified that bank control of export trading companies posed unacceptable risks to our banking system. Their recommendation was that exports could best be served by banks continuing their role as financiers, holding a minority position perhaps in export trading companies, but not a position which would jeopardize bank capital in the highly leveraged risk operations of an export trading company.

Our export posture is not one that requires that we put our financial system at risk. We already have enough risk in our financial system.

I offered an amendment in committee which would contain the risk yet let the legislation move forward. This amendment would have allowed control of an export trading company by only a bank holding company or an Edge Act International Company. The benefit of my amendment is that it would continue to require separation between banking and nonbanking activities and would lodge authority in the Federal Reserve to administer the provisions. That is consistent with our existing banking structure where nonbank activities are carried out through the holding company and through Edge Act Corporations. Both the bank holding company laws and the Edge Act are administered by the Federal Reserve.

The Senate, on occasion, closes its ears to meritorious responses to questions raised by legislation. This is one of those occasions. Thus, the Senate will send to the House a bill that mixes banking and commerce unnecessarily. I trust the House Banking Committee will clarify the situation.

By recommending that the Commerce Department play the key role in administering the Sherman Antitrust Act in place of the Justice Department and the Federal Trade Commission, this administration continues its assault on the antitrust laws.

The legislation rewrites the Webb-Pomerene Act. Currently, adherence to the provisions of the Webb-Pomerene Act provides a defense against suit under the Sherman Act for export associations. This legislation goes further. An export association, upon making an application to the Commerce Department, may obtain certification by the Commerce Department that its activities meet the standards of the legislation.

Such a certification carries with it immunity from not only the Federal antitrust laws but also from State antitrust laws and private party suits, except for ultra vires acts.

This intrusion into the realm of State's rights and private rights might be plausible if a Federal agency with antitrust experience was charged with the responsibility of administering the statute. That is not the case here. The Commerce Department will issue the certificates upon consultation with the Justice Department and with the Federal Trade Commission. The legislation leaves it up to the Commerce Department to determine the degree to which it considers the views of the Justice Department and the Federal Trade Commission.

While the Justice Department and the Federal Trade Commission may file suit within 30 days after the issuance of a certificate by the Commerce Department on the grounds that the export association's behavior violates the standards set forth in the Webb-Pomerence Act, it is clear that the real action in administering the law will be in the granting of certificates—and who has that power? The Commerce Department.

The Commerce Department is in a massive conflict-of-interest situation under the legislation, having responsibilities to promote trade and enforce the antitrust laws. It is clear that the antitrust laws are going to take a back seat. And why? The antitrust laws have served this Nation well, giving us a marvelous free and open competitive society. They are now to be placed on the scrap heap because the Justice Department and the Federal Trade Commission have done their job in enforcing the law, and they are going to be taken out of the act by this bill.

The true test of competition is whether there is a market restraint on prices. The authors of this legislation told us that this legislation did not change the substantive standards under the antitrust laws. Yet, when the antitrust experts came before the committee, we were told that the legislation is:

> An attempt to codify what many people who participated in this process consider to be the best thinking on what the law should be interpreted to be by the courts.

That statement makes it obvious that a good deal of judgment went into the alleged codification.

It is clear from the testimony of Secretary Baldrige that, where U.S. firms fix prices overseas or allocate markets overseas, he intends to certify the behavior even though such behavior is actionable at the present time under the antitrust laws. It was precisely this kind of behavior in overseas markets that caused the Wall Street Journal to say in an editorial—this is the Wall Street Journal, not the AFL-CIO—

> By endorsing and expanding the principle of export cartels, the legislation undermines U.S. commitment to an open international trading system. How can we complain about OPEC or Third World cartels if we encourage our producers to form their own export cartels?

Mr. President, it is clear that the Commerce Department will not have the stomach to stand against price fixing overseas. How will they administer the act when the effect is on domestic prices? I do not know, but I have my doubts. Commerce will find itself in a basic conflict position of trying to balance effects on domestic prices and overseas trade.

The Commerce Department has no expertise in administering antitrust statutes, according to Secretary Baldrige's own testimony. Yet they are entrusted with administering a complex statute. For example, under the legislation, one of the changes made is to prohibit effects on domestic prices that are "unreasonable," terms of art under the Sherman Antitrust Act. But with respect to price-fixing under the Sherman Act, no inquiry is permissible as to "reasonableness" or "unreasonableness."

Price-fixing is one of those categories of antitrust behavior that is per se unlawful. Where price-fixing is found, it is always held to be "unreasonable" under current law.

Now comes this legislation, providing that only behavior that does not "unreasonably enhance, stabilize or depress prices within the U.S." is permitted. Price-fixing is to be allowed, is it not? Is that not what that means? How much price-fixing is reasonable or unreasonable? And the Commerce Department, which has no experts, no experience, no background in antitrust laws, is to administer the law while the experts at the Justice Department and the Federal Trade Commission sit on the sidelines. I hope the House Judiciary Committee refines the antitrust sections substantially, and there is every indication they will do so.

Thus, Mr. President, we have before us a bill that proves the worth of having two Houses of Congress. The Senate has a good concept, but goes too far, perhaps even in anticipation of the expected cutback in the bill in the House. I hope the House will perform the needed surgery on this bill and the Senate should not expect to see quite the same bill when it returns from conference.

Mr. President, I ask unanimous consent that letters from the Independent Banker's Association, the Securities Industry Association, the Independent Insurance Agents and the Conference of State Bank Supervisors be printed in the RECORD following my remarks.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

INDEPENDENT BANKERS ASSOCIATION OF AMERICA,
McHenry, Ill., September 2, 1980.

Hon. WILLIAM PROXMIRE,
Chairman, Banking, Housing, and Urban Affairs Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR CHAIRMAN PROXMIRE: As the Senate continues to deliberate the merits of S. 2718, the Independent Bankers Association of America deems it appropriate to present its views on the Proxmire-Federal Reserve Amendment (Amendment No. 2276) which would prevent a single banking organization from owning more than 20 percent of an export trading company or group of banking organizations from owning more than 50 percent of an export trading company, except under extraordinary circumstances.

Just as the IBAA opposes the concentration of banking resources, it opposes the dominance by a few large banking organizations of the export trading company area. We believe that the Proxmire-Federal Reserve Amendment (Amendment No. 2276) will help preserve the separation of banking and commerce and prevent the excessive concentration of economic power. Therefore, we support it.

Sincerely,

THOMAS F. BOLGER,
President.

SECURITIES INDUSTRY ASSOCIATION,
Washington, D.C., March 30, 1981.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: The Securities Industry Association is extremely concerned as to the breadth of S. 734, legislation which would extend to the banking industry the ability to form and participate in export trading companies. We understand the bill will be considered by the Senate this week. While we can recognize a clear and compelling need to improve our export posture and balance of payments abroad, we seriously question whether or not commercial banks should be permitted to engage in this extremely high risk area of commerce.

Our membership believes this bill, as written, presents a situation where major money center banks without the appropriate regulator's approval, could direct a captive export trading company to engage in the underwriting, selling, and distributing of securities and commodities that would otherwise be prohibited by both the Bank Holding Company Act and the Glass-Steagall Act. We believe this to be a fundamental breach of the Glass-Steagall Act in an area which was not thoroughly explored during Senate Banking Committee consideration. It is our hope that Congress, during its consideration of this legislation, will amend S. 734 to prohibit this kind of circumvention of existing legislative restrictions on commercial banks and bank holding companies.

Sincerely,

EDWARD I. O'BRIEN.

INDEPENDENT INSURANCE AGENTS OF AMERICA INCORPORATED,
March 9, 1981.

Hon. WILLIAM PROXMIRE,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR PROXMIRE: Our association would like to raise serious objection to certain provisions of the Export Trading Company Act, S. 144, now before the Senate Banking Committee.

In general, the Export Trading Company Act's stated purpose represents a dramatic policy shift from the more than 100 year separation of banking and commerce—a separation that this association, in connection with other legislation now before this committee, has fought hard to retain.

The encouragement and facilitation of bank participation in and ownership of export trading companies is bound to have adverse implications for many small businesses not privileged to have access to banks' capital, credit, financial records, and expertise. Moreover, any advantages to export trading company clients that may derive from a bank's ability to engage in a full range of export services through an export trading company may be more than offset by non-competitive tie-ins of these services to credit.

Specifically, language contained in Sections 103(a) 3 and 4 of the Act virtually ensures adverse impact on a now thriving and highly competitive non-affiliated export insurance market, and on potential export trading company clients.

That section includes within the definition of collateral services to be provided by export companies the term "insurance." Since not qualified in any way, the term could be interpreted to include insurance sales, services, or underwriting, for domestic or international coverages, within the context of onshore or offshore insurance operations.

Additionally, the proposed bill contains no language that would protect export trading company clients from direct or implied tie-ins of insurance sales to the credit and managerial services the companies will be offering.

Moreover, it is unclear from the Act, or from any previous committee record, whether all of the permissible insurance services are to be subject to the traditional state regulatory apparatus established by the McCarran-Ferguson Act. Specifically, it is unclear whether, if included within definition of insurance, offshore export insurance captives are intended to be subject to state regulation, or will be able to escape the rigors of state oversight and enforcement.

Export, trade insurance services are available today from many sources at competitive prices. Introduction of additional sources, of undefined scope, unfairly advantaged by access to capital, credit, and managerial services, would seem at best unnecessary and at worst extremely harmful to existing markets and potential clients.

IIAA would propose as a remedy the deletion of the word "insurance" from sections 103(a) 3 and 4. Additionally, the committee's report should make explicit the committee's awareness of the dramatic shift in heretofore traditional public policy that enactment of S. 144 would engender, including possible adverse effects on businesses now associated with export trading, but denied access to the competitive advantages export trading companies will enjoy should this bill become law.

Sincerely,

ROBERT REYNOLDS, CPCU.
President, IIAA.

MARCH 23, 1981.

Hon. WILLIAM PROXMIRE,
Dirksen Building,
Washington, D.C.

DEAR SENATOR PROXMIRE: You will soon be voting on S. 144, The Export Trading Company Act of 1981. The Conference of State Bank Supervisors opposes this legislation because, as currently drafted, it would override state authority over state-chartered institutions and would violate the principle of the separation of banking and commerce.

CSBS asks that you support the Proxmire amendment to limit control of export trading companies to bank holding companies, Edge Act Corporations and bankers banks. The Proxmire amendment would eliminate the preemption of state authority and would lessen to some degree the erosion of the policy of the separation of depository banking activities from other forms of commerce.

Representing the primary chartering and regulatory source for state-chartered commercial banks, the Conference strongly objects to those provisions in S. 144 which would permit state-chartered commercial banks to take equity positions in business enterprises in violation of state banking codes banning such action. This proposed action would constitute a serious preemption of state authority to determine the operating powers of banks which they charter and supervise. In the absence of some overriding national policy consideration, which we do not perceive here, CSBS objects to any statutory provisions which would enlarge state-chartered banks' powers beyond those which a state authorizes for its institutions.

CSBS supports Congress in its efforts to increase U.S. exports, but believes that goal can be achieved more effectively by reducing government-related burdens on producers of goods and services which might be sold abroad. American industry can be competitive in the international marketplace if we allow it to be. Oppressive taxation, government-fed inflation, consequent high interest rates, high labor costs and direct control adversary-type government regulations, all merit attention ahead of another government program—particularly one which has all the ingredients of more, not less, regulatory burdens. Until the underlying causes of our industrial malaise have been addressed, no program, no matter how well intentioned, can succeed.

Moreover, the principle of the separation of banking and commerce, a cornerstone of our policy against undue concentration of economic power, should not be abandoned without proven necessity to do so. Bank equity in nonbanking enterprises, like government equity, presents a very real danger of credit allocation.

For all of these reasons, the Conference of State Bank Supervisors asks that you support the Proxmire amendment and oppose final passage of S. 144.

Sincerely,

LAWRENCE E. KREIDER,
Executive Vice President-Economist.

Mr. PROXMIRE. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SCHMITT). The Senator from Massachusetts.

Mr. TSONGAS. Mr. President, this is an issue that is coming back. As the Chair knows, we dealt with it last year. The vote, I believe, was 77 to 0, or 78 to 0, something of that magnitude.

The reason there is such broad support is, I think, a growing awareness of the need for an aggressive export policy. Though there are many components of that, certainly, export trading companies are part of it.

Mr. President, in the last 5 years, our trade deficit totaled $105.7 billion. There are many ways of looking at that, but the fact is that this hemorrhaging of U.S. capital has weakened the dollar in overseas markets and inflated the costs of imports to Americans. Look at our German and Japanese competitors, who make export trade a top priority. In the same 5-year period, they have had total trade surpluses of $88.8 billion and $55.6 billion respectively.

I might add that these two countries import a much higher percentage of their energy than we do.

We must reduce this trade deficit. The Commerce Department estimates that less than 1 American firm in 10 sells overseas. This record must be improved. If we continue to believe that the status

quo provides ample trading possibilities, we may soon find America reduced to the status of a glorified banana republic ever diminishing our raw materials and awash in imported manufactured goods.

The bill before us attempts to improve this situation. It makes possible the formation of American export trading companies to deliver the output of small- and medium-sized American businesses to the marketplaces of the world. Export trading companies would represent American firms abroad and perform international market research, customs documentation, and regulations research. They would have expertise in exchange rate issues and foreign market potential.

I would ask Members to go around their States and talk to their small- and medium-sized businessmen and ask how many of those are familiar with exchange rate issues and other such matters critical to international trade.

The Commerce Department estimates that more than 20,000 nonexporting U.S. firms offer products that could compete abroad. Export trading companies are an attempt to tap this vast potential.

Title I of S. 734 allows banks to participate in the formation of export trading companies. Banks bring to bear their investment capital, international networks, and international financial expertise, and as such are the institutions that have the best chance of making export trading companies significant contributors to increased American exports. Bank controlling intrest in ETC's is permitted, with strict constraints, to assure banks the opportunity to use their international financial aid management skills fully. A number of safeguards are in place to prevent bank abuses:

Banking organizations can invest no more than 5 percent of their assets in export trading companies.

Approval of the appropriate bank regulators is necessary for investments in excess of $10 million or if controlling investments by the bank exceed 50 percent of the stock of an export trading company.

I, for one, find these restrictions to be somewhat excessive, but within the framework of trying to provide the proper assurances, I can live with them.

Mr. President, let me stress that export trading companies are an idea that business leaders in New England are fully behind. In my own State of Massachusetts, my small business advisory task force is eager for the enactment of S. 734. The Small Business Association of New England strongly endorses export trading companies. The New England Congressional Institute's export trading company task force, consisting of 15 economists, bankers, and businessmen, also believe the export trading company idea deserves attention. Two banks in my State, the First National Bank of Boston and the Shawmut Bank are keenly interested in the bill. In addition, I have met with a number of textile manufacturers in this past year and found it refreshing to listen to their support for export trading companies as a means to compete internationally. A Department of Commerce study indicates that American textile manufacturers could benefit significantly from this bill. I suggest that international competitiveness is a much better option than protectionism.

Mr. President, this bill is a start in a much needed effort to improve our international trade competitiveness. It means jobs for Americans and help in paying our huge oil debt. We cannot afford to pass up this opportunity. I am confident that, as last year, the Senate will pass this measure—without dissent, it is hoped.

Let me talk about some of the issues that have been raised in opposition, which are the same issues raised last year. The problem, in the meantime, has not gone away.

One argument put forth is the idea that there is no trade problem. Exports are growing, so why worry? I must point out that even though U.S. exports have grown in the 1970's from 4.3 percent of our GNP to 8 percent today, we are in fact losing ground in the growing overseas markets. The U.S. share of the total world market in 1970 was 15 percent; in 1980, it was 12 percent. The U.S. share of the manufactured goods total world market has gone from 21.3 percent to 17.4 percent.

Second, let me talk about the current account issue. Those who argue that we do not have a crisis because the current account is in balance are half right and half wrong. They are absolutely correct that the current account is in balance. They are absolutely incorrect, in my opinion, that that is cause for great comfort. There are several reasons why I feel this way.

First, any rapid growth in foreign investments here would rapidly offset the return in our foreign investment there, so our strength is a reflection of what our trading partners have not yet done but are increasingly doing. The advantage we have by the balance of current accounts is a function of noninvestment by foreigners in this country; and as everybody knows, that is changing rapidly. So the advantage we have is illusory. It is a function not of our strength but of decisions made by others.

Second, the recent jump in recorded return on foreign investment is caused to some degree by companies bringing funds back to America to take advantage of high-interest rates. This is a temporary and rather artificial source of strength.

Third, living off returns from foreign investments is sort of coupon-clipping writ large. It is a static benefit derived from past competitiveness. It is no substitute for present competitiveness. To have the edge which enables you to invest abroad successfully requires a lead in technology, production, and management know-how. No return of a foreign investment can continue if there is not movement up the product scale and a retention of the competitive edge.

There are also those who would argue that we do not have an export crisis but that, in fact, what we are dealing with is simply a problem that results from the price of oil going up dramatically. That is true. Our ever growing oil bill certainly creates our trade problem.

The Japanese and the Germans, however, who import a higher percentage of their energy than we do, have taken an activist position to insure their own economic survival. They have done what is necessary to pay their oil debt in a competitive world economy; they have made trade their No. 1 priority. That is a mind set we do not have in this country and must rapidly assume.

Finally, one can argue against export trading companies because of fear of expanding the powers of banks. I think the German and Japanese responses would be simple—that without the capacity to compete internationally we will run up our trade deficit year after year, and soon not have an economy to worry about. That response must become our response.

My State, which has witnessed the decline of the shoe and textile industries, is probably the best example—at least during my lifetime—of a State that has learned dramatically, and to its chagrin, what it means not to be competitive internationally. We in Massachusetts now have an unemployment rate considerably below the national average because of our capacity to produce world class high technology equipment.

If we lose the capacity to compete internationally in this area, what do we then go to? Probably years of decline. It seems to me that we should learn our lesson and do what our international competitors are doing.-and that is to take international trade seriously and do what is necessary to be competitive. Export trading companies represent a first step.

There are other important trade issues—Export-Import Bank funding the taxation of Americans abroad—but they are issues for another time.

Today it is my hope that the export trading companies measure will be passed, and passed unanimously as it was passed last year. Then we can work on the House side, to make them see the wisdom of the bill.

Mr. HEINZ. Mr. President, will the Senator yield?

Mr. TSONGAS. I yield.

Mr. HEINZ. Mr. President, I commend the Senator for his statement. I agree strongly with something he said at the close, which is that this is only a part of what we need to do to enhance this Nation's export stance to be competitive.

There are a number of things we have to do in connection with the Foreign Corrupt Practices Act, sections 911 and 913, of the Internal Revenue Code, as well as many other things—the Export-Import Bank, getting some negotiations going in terms of export credit financing practices worldwide, perhaps even a follow-on trade bill to the Trade Agreements Act of 1979.

So I believe the Senator is absolutely correct as to the points he has made, and I commend him for his statement.

Mr. TSONGAS. I thank the Senator for his comments. I will take a Xerox copy of his remarks and send it to the White House.

They are equally persuaded as to the value of the comprehensive approach.

Mr. HEINZ. It is my hope the Senator and I will be able to join together. I think he and I agree.

Mr. PROXMIRE. Mr. President, before the Senator yields the floor, and I know the Senator from Nebraska is anxious to call up an amendment, I shall take a few minutes to call attention of the Senate to testimony before the committee that showed a few things.

It showed in the first place, unlike the arguments made by my good friends from Pennsylvania and Massachusetts, the trade balance has been improving and sharply improving.

As one witness pointed out before our committee on March 5, he pointed out that 1980 was the second consecutive year in which our merchandise trade deficit declined; that in 1980 exports increased $39.9 billion or some 22 percent; that in 1980 our merchandise trade balance with non-OPEC developing countries moved to a surplus of $3.3 billion from a deficit of $3 billion, while the surplus with Western Europe increased to $20.3 billion from $12.3 billion, and that looking solely at nonagricultural exports, 1980 showed an increase of $33.4 billion or some 7 percent by volume.

Let me conclude by saying that Henry *Wallich, who is the international* finance expert for the Federal Reserve Board and a highly respected international economist, argued exactly the opposite position from what the Senator from Massachusetts was telling us about, the significance of balance on current accounts. He pointed out that overall, if you include everything, investment, income, services, et cetera, *overall our position stands in* sharp contrast, with that of continental European countries and Japan, all of which are recording deficits on current accounts.

So in both of these areas he has said that we have improved and improved sharply and that overall our current account balance which is in his judgment, and he is a man of very distinguished credentials and highly respected as an economist, the top international expert for the Federal Reserve Board, he feels we are in very sound position and improving.

Mr. TSONGAS. Mr. President, I make *just two points.*

First, let me say that to argue that our balance of trade is not as bad as it used to be, so we need not worry about it, is *the* same as arguing that my house mortgage and my car mortgage are less expensive, due to inflation, so I need not worry about paying them. The fact is you have an enormous deficit that you are running, as I have pointed out in my remarks. During the last 5 years, it totals *over $105 billion. That is a gigantic* deficit that cannot be ignored.

The second point is that these are the same arguments that my distinguished chairman used last year and yet he still voted for the bill. I can only assume that in the deep recesses of his heart, he knows we are right.

Mr. PROXMIRE. Mr. President, may I say I voted for the bill. I think the bill, as I say, overall is all right though there are two parts of the bill that I oppose, and the Senator's statement did not go to those. The antitrust feature of the bill is certainly one of the principal ones and giving the Federal Reserve the centralized power of administering it, is something the Senator did not discuss.

I agree overall it is good to have this legislation. But I think it can be improved.

Mr. TSONGAS. On that note I agree.

UP AMENDMENT NO. 58

(Purpose: To make technical amendments; to remove the establishment of the Office of Export Trade; and to eliminate the term "invalidation" and substitute the term "revocation")

Mr. HEINZ. Mr. President, I send a package of amendments to the desk, four in number, and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an unprinted amendment en bloc numbered 58.

Mr. HEINZ. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, line 14, strike out "and" and insert in lieu thereof "or".

On page 5, line 16, strike out "and" and insert in lieu thereof "or".

On page 11, line 25, delete ", after notice and opportunity for hearing,".

On page 12, line 5, after "agency" insert ", after notice and opportunity for hearing,".

On page 25, strike out lines 4 and 5, and insert in lieu the following:

"(b) PURPOSE.—It is the purpose of this title to encourage American exports by directing the".

On page 54, strike out lines 7 through 19. Renumber succeeding sections accordingly.

On page 30, line 23, strike out "or invalidation".

On page 40, line 1, strike out "INVALIDATION" and insert in lieu thereof "REVOCATION".

On page 40, line 15, strike out "invalidation" and insert in lieu thereof "revocation".

On page 40, line 20, strike out "declaring the certificate invalid" and inserting in lieu thereof "revoking the certificate".

Mr. HEINZ. Mr. President, there are *four technical amendments.*

Mr. PROXMIRE. Mr. President, we had an opportunity to review these amendments. They are technical amendments, and I have no objection to them. They are fine amendments. I support them.

Mr. HEINZ. I thank my colleague from *Wisconsin.*

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendment (UP No. 58) was agreed to.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEINZ. Mr. President, before I yield, and I know the Senator from Nebraska has an amendment that he wants to offer, I simply wish to provide for the RECORD a letter we recently received from the Conference of State Bank Supervisors who prior to the discussion we had in the Chamber today did object to the bill on the basis that they thought it preempted State bank regulatory authority.

This letter lays that objection to rest, and I quote in part:

The Conference is satisfied that your explanation, made a part of the legislative history of the Export Trading Company Act, responds adequately to our objection on the points covered. That objection is therefore withdrawn.

Mr. President, I ask unanimous consent that the entire text of this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CONFERENCE OF STATE BANK SUPERVISORS,
Washington, D.C., April 1, 1981.

Hon. JOHN HEINZ,
Russell Building,
Washington, D.C.

DEAR SENATOR HEINZ: The Conference was pleased to learn of your intent to address our concern over the apparent override of state authority over state-chartered institutions contained in S. 734, the Export Trading Company Act.

It is our understanding that you will explain the intent of the bill in the following terms:

"Nothing in the bill is intended as an override of existing state authority over state-chartered institutions. Limitations which now exist by force of individual state statutes or regulations that would affect the ability of state-chartered banks to take equity positions in export trading companies are not preempted. Furthermore, because no override of existing state regulatory authority is intended, nothing in the bill can be construed as preventing states from adopting laws or promulgating regulations which would prohibit, condition, limit or restrict investments by banks chartered under the laws of any state. That is the intent of Section 105(g) of the bill.

"To the extent that state-chartered institutions are not prohibited by state statute or regulation from taking any equity position in an export trading company within the meaning of this bill, Section 105(b)(1)(B) is not intended to create an exclusive approval right in the appropriate federal banking agency where a controlling interest is to be acquired, nor is Section 105(b)(1)(A) intended to preclude the requirement of state approval for the taking of less than a controlling interest. It is not intended that this bill interfere in any way with the present role of the state banking department as the primary regulator of state-chartered institutions."

The Conference is satisfied that your explanation, made a part of the legislative history of the Export Trading Company Act, responds adequately to our objection on the points covered. That objection is therefore withdrawn.

The Conference does, however, reserve its objection to the erosion of the principle of the separation of banking and commerce, absent a proven necessity to do so.

Sincerely,

LAWRENCE B. KREIDER,
Executive Vice President-Economist.

Mr. HEINZ. Mr. President, there are a number of supporters of this bill that I

wish to take another minute just to read into the RECORD.

These include:

President's Export Council.
National Governors' Association.
U.S. Chamber of Commerce.
American Bankers Association.
National Forest Products Association.
National Association of Manufacturers.
American Association of Port Authorities.
Mining and Reclamation Council of America.
Emergency Committee for American Trade.
National Small Business Association.
American Textile Machinery Association.
Man-Made Fiber Products Association.
American Apparel Manufacturers Association.
Scientific Apparatus Makers Association.
National Machine Tool Builders Association.
American Soybean Association.
Electronic Industries Association.
National Customs Brokers and Forwarders Association of Amercia.
National Federation of Independent Business.
American Leagus for Exports and Security Assistance.
American Electronics Association.
Business Roundtable.
Bankers Association for Foreign Trade.
Task Force on International Trade of the White House Conference on Small Business—Thomas M. Rees.
Acme-Cleveland Corporation.
Commercial Credit Company.
Rockwell International Trading Company.
Philadelphia National Bank.
North Carolina National Bank.
International Trade Operations, Inc.
Export Managers Association of California.
Schueler and Company.
American Institute of Marine Underwriters.
AMERX.

And last, by no means, at least two administrations, the previous one and this one as evidenced by the testimony of Secretary Baldrige, of the Commerce Department, at our hearings.

Mr. President, we are delighted with this broad support of the legislation and delighted to have the support of the Senator from Wisconsin for this legislation and as I say some 61 cosponsors that we have.

Mr. DANFORTH. Mr. President, the United States needs to become an aggressive exporter of its goods and services. One need only look at our growing trade deficit to appreciate that our industries are losing the competitive battle within world markets.

For the first 70 years of this century our Nation had a positive trade balance with its trading partners. For the better part of this century U.S. industry was efficient, had innovative capacity, and was unexcelled in technological leadership. Today, the statistics and the outlook is not that encouraging. In 1977 the United States ran a $26.5 billion deficit, a $28.5 billion deficit in 1978, and a $25 billion deficit in 1979. Last year the trade deficit was approximately $25 billion. The economic stability of our Nation is being swiftly eroded.

In the last two decades the U.S. share of free world exports declined from 15 to 11 percent. Within the last 5 years our major competitors have managed to increase real exports by 4 percent a year, while the value of U.S. exports, adjusted for inflation, has shown little if no growth. Looking at the relative importance of exports as a percentage of GNP, U.S. exports account for approximately 7 percent of GNP in contrast to Japan where exports account for 14 percent of GNP and for 22 percent of GNP in Germany. Something has to be done to spur U.S. exports.

Mr. President, S. 734 is a step in that direction. The bill encourages and provides a framework within which export trading companies may be formed. The bill enables banking institutions to invest in export trading companies under specified and carefully regulated conditions. Further, S. 734 significantly amends the Webb-Pomerene Act of 1918 to clarify the antitrust provisions applicable to export trade associations and provides a certification procedure whereunder export trading companies and trade associations may receive antitrust clearance for specified export trade activities.

Mr. President, I would like to address my remarks to the antitrust provisions of S. 734, specifically title II. Title II finds its origin in S. 864, the Export Trade Association Act of 1979, intrdouced by myself and Senators BENTSEN, CHAFEE, Javits, HEINZ, and MATHIAS on April 4, 1979. Hearings were held on S. 864, and other bills, on September 17 and 18, 1979 before the Subcommittee on International Finance of the Senate Committee on Banking, Housing, and Urban Affairs. A revised version of S. 864 was introduced on February 26, 1980 as amendment No. 1674. Hearings on the revision were held on March 17 and 18, and April 3, 1980. The Senate Banking Committee reported an original bill, S. 2718, which contained amendment No. 1674 to S. 864. On August 27 and September 3, 1980, S. 2718 was considered by the Senate and passed by a vote of 77 to 0. On January 19, 1981, Senator HEINZ, I, and others introduced S. 144. Title II of S. 144 was the same as title II of S. 2718 as passed the Senate last year. Hearings on S. 144 were held before the Subcommittee on International Finance and Monetary Policy on February 17, 18, and March 5, 1981. S. 144 was reported out by the Banking Committee as S. 734.

Before I address myself to the particulars of title II of S. 734 I believe a brief historical background of the current law—the Webb-Pomerene Act of 1918 (15 U.S.C. 61–66) which title II amends, will prove beneficial.

In 1914 Congress directed the Federal Trade Commission to study and report to the Congress on the conditions affecting U.S. export trade. In 1916 the Federal Trade Commission published a report that found American manufacturers and producers when attempting individually to enter foreign markets to be at a disadvantage because of strong combinations of foreign competitors and organized buyers. The report also noted that the threat of antitrust prosecutions under the Sherman Act deterred exporters from carrying out collective efforts to challenge foreign cartels.

In response to the findings of the FTC report, Congress passed in 1918 what has come to be known as the Webb-Pomerene Act. The purpose behind passage of the Webb-Pomerene Act was to provide U.S. exporters with the ability to compete in international markets on an equal basis with their foreign competitors. The Webb-Pomerene Act provides a limited exemption from both the Sherman and Clayton Antitrust Acts to qualified joint ventures in export trade known as Webb-Pomerene Associations. The Webb-Pomerene law exempts from U.S. antitrust laws any association established "for the sole purpose of engaging in export trade" (15 U.S.C. 62) as long as the association, its acts, or any agreements into which the association enters, do not: First, restrain trade within the United States; second, restrain the export trade of any domestic competitor of the association; or third, artificially or intentionally enhance or depress prices within the United States of commodities of the class exported by such association or substantially lessen competition within the United States or otherwise restrict trade therein (15 U.S.C. 62).

The Webb Act defines "export trade" to include only "trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States" (15 U.S.C. 61). As is obvious, the Webb Act does not extend to exports of services.

Mr. President, both the legislative history of the Webb Act, and the administrative and judicial interpretation of the act, shed light on its scope and intended effect.

The debate on passage of the Webb Act was centered on the resolve of two points mentioned in the FTC report. These were: First, that American firms and U.S. exports might be benefited if cooperative arrangements reduced the costs of foreign marketing or enhanced the bargaining power of American firms when dealing with foreign buyers; and second, that domestic trade might be affected adversely if cooperative arrangements enabled American firms either to exploit consumers in the home markets or exclude nonmember firms from the export market.

The legislative history of the Webb Act, including both House and Senate reports and the debates in the CONGRESSIONAL RECORD, evidences that Congress presumed that formation of export trade associations would enable smaller American firms to compete more effectively with large and powerful firms abroad by permitting American sellers to combine and bargain collectively. It was believed that the combined power of American firms would provide the means for entry into foreign markets which previously were blocked by the power and tactics of sellers and buyers abroad.

Early in the history of the Webb Act the FTC issued a letter setting forth its enforcement intentions. In that letter, known as the 1924 silver letter, the FTC announced that an association could qualify under the Webb Act if it existed for no other purpose than to fix prices and allocate sales in foreign markets—as long as the substantive criteria set forth in the act were met—and while foreign corporations were excluded from membership in Webb Associations, these

associations might enter into any cooperative arrangements with nonnationals which might enhance their trade position in foreign markets.

A second determination of the silver letter—permitting restrictive agreements between Webb associations and foreign nationals—was rescinded in 1955. Under the new criteria outlined by the FTC, if export associations enter into restrictive agreements with foreign competitors, those agreements will not be within the antitrust proections of the Webb Act and the lawfulness of the associations' activities will be judged under the Sherman Act, as would similar conduct by an individual exporter.

After issuance of the silver letter it was not until the 1940's that further clarification was afforded the scope of the Webb-Pomerene antitrust exemption through a series of investigations conducted by the Commission known as the 202 series of recommendations. These investigations concluded that a Webb-Pomerene association may not:

Enter into agreements of any kind with domestic producers who are not members of the association which fix prices, terms of sale, or otherwise restrain the free export of goods of nonmember firms. Pipe Fittings and Valve Export Association (1948).

Enter into agreements of any kind whereby exports of domestic nonmember producers are deducted from the export quota of the association. Florida Hard Rock Phosphate Export Association (1945).

Enter into agreements of any kind which prohibit association members from selling to domestic exporters in competition with the association, or which deduct sales by a member within the United States from the member's export quotas through the association. Phosphate Export Association (1946).

Falsely represent that it is the sole export representative of the United States in a given industry. Pacific Forest Industries (1940).

Enter into agreements of any kind with owners or operators of shipping terminals, thereby restricting use of such terminals to only association members. Phosphate Export Association (1946).

Be involved in acquiring control of any patent or process useful in the production of the goods it markets. Sulphur Export Corp. (1947).

Enter into an agreement of any kind which precludes or restricts the right of the association or its members from using a trademark or label in the United States. General Milk Co., Inc., Ltd. (1947).

Enter an agreement of any kind whereby it controls or attempts to control any of the terms or conditions of sales by its members within the United States. Phosphate Export Association (1949).

Enter an agreement of any kind with any foreign producer or cartel whereby the United States is designated as an exclusive trade area, or imports into the United States are otherwise curtailed or restricted. Export Screw Association of the United States (1947).

Own stock, either directly or indirectly through subsidiaries, in corporation or other producers outside the United States. Export Screw Association of the United States (1947).

Enter an agreement of any kind whereby foreign producers are guaranteed the right to sell within a given area a specified tonnage over and above sales in that area by the association. Sulphur Export Corp. (1947).

Enter an agreement of any kind which discriminates among its members as to the right of withdrawal, resignation, or restricting the right of former members to compete with the association after withdrawal. Phosphate Export Association (1946).

Conduct office operations jointly with a domestic trade association. Carbon Black Export, Inc. (1949).

Enter an agreement of any kind to "maintain the status quo" in the world market of the industry and to do nothing which would encourage or increase competition in the industry. Sulphur Export Corp. (1947).

Take into membership anyone who is not a citizen of the United States, nor any foreign purchaser, customer, representative, or agent of a foreign company. Phosphate Export Association (1946).

In 1966 the Commission in advisory opinion No. 91 determined that membership by a firm owning foreign entities is permissible in a Webb-Pomerene association.

Further clarification as to the parameter of the antitrust exemption provided under the Webb Act has been gained through adjudication of a number of cases brought by the Department of Justice. Of these cases there are two major decisions which interpret the scope of the Webb Act.

In the first case, United States against Alkali Export Association (Southern District, New York, 1944) the court found that a Webb association had violated the Sherman Act by participating in foreign cartels that engaged in practices resulting in the use of monopoly power to extinguish the competition of independent domestic competitors engaged in export trade and, which carried out practices that stabilized domestic prices by removing surplus products from the domestic market. In the second case, United States against Minnesota Mining Mfg. (District Court, Massachusetts, 1950) the court held that an export association could not establish or operate jointly owned facilities abroad and then went on to give illustrations of conduct that a Webb association may lawfully carry out: First, an association could be created by a majority of the firms in an industry; second, the association could be used as the members' exclusive foreign outlet; third, members of the association could agree that goods would be purchased only from member producers; fourth, resale prices could be fixed for the associations' foreign distributors; fifth, prices could be fixed and quotas established for members; and sixth, foreign distributors could be required to handle only the members' products.

The Minnesota Mining case provides the most authoritative interpretation of the scope and rationale of the antitrust exemption under the Webb-Pomerene Act. As stated by the court:

> Now it may very well be that every successful export company does inevitably affect adversely the foreign commerce of those not in the joint enterprise and does bring the members of the enterprise so closely together as to affect adversely the members' competition in domestic commerce. Thus every export company may be a restraint. But if there are only these inevitable consequences, an export association is not an unlawful restraint. The Webb-Pomerene Act is an expression of Congressional will that such a restraint shall be permitted.

In enacting the Webb-Pomerene Act, Congress envisioned an eager American business community availing itself of the opportunity to pool its facilities, resources, and expertise in such a fashion as to implement an ambitious joint exporting program. That vision never materialized.

At their high-water mark between 1930 and 1935, Webb-Pomerene Associations numbered 57 and accounted for approximately 19 percent of total U.S. exports. Today the number of associations has dwindled to around 30 and their share of total U.S. exports has dipped to less than 2 percent.

The reasons for this poor showing are many. To list but a few:

The business community traditionally has placed top priority on tapping the vast domestic market and has been much slower to focus on the prospects overseas.

The ever-expanding U.S. service industries have been excluded from qualifying for the act's antitrust exemption.

The Department of Justice, and to a lesser extent the Federal Trade Commission have been perceived by the business community as exhibiting a thinly veiled hostility toward Webb-Pomerene Associations. Therefore, the threat of antitrust litigation has served as a deterrent to broader utilization of the Webb-Pomerene Act.

All in all, there remains the strong impression among most parties that the Webb-Pomerene Act is a quaint relic of the past—a cracked plate that is not good enough to be brought out for company and yet not so useless as to be thrown away. This is regrettable, particularly at a time when we are suffering year in and year out $30 billion deficits.

Title II to S. 734 modifies the Webb-Pomerene Act in a way that will permit many more American firms to make use of its updated provisions to promote exports.

Title II does the following:

It makes the provisions of the Webb-Pomerene Act explicitly applicable to the exportation of services. (The National Commission for the Review of Antitrust Laws and Procedures made this same recommendation in its report to the President.

It expands and clarifies the act's antitrust exemption for export trade associations, and provides an antitrust exemption for export companies formed under title I of S. 734.

It requires that the antitrust immu-

nity be made contingent upon a preclearance procedure.

It transfers the administration of the act from the FTC to the Department of Commerce.

It creates within the Department of Commerce an office to promote the formation of export trade associations and trading companies.

It provides for the establishment of a task force whose purpose will be to evaluate the effectiveness of the Webb-Pomerene Act in increasing U.S. exports and to make recommendations regarding its future to the President.

Mr. President, with respect to amendments made to the Webb-Pomerene Act by title II of S. 734 section 201 states the short title of the act while section 202 sets forth findings by the Congress regarding exports and joint exporting activities and the need for amending the 1918 Webb-Pomerene Act (15 U.S.C. 61–66).

Section 203 amends section 1 of the Webb-Pomerene Act (15 U.S.C. 61) and defines the pertinent terms to be used in the amended Webb-Pomerene Act. "Export trade" is amended to include trade in services as well as that in goods, wares, or merchandise. "Service" is defined as meaning tangible economic output and is intended to be an all-encompassing definition, a term not limited by usage relevant to any particular point in time. The term "trade within the United States" retains the definition under section 1 of the Webb-Pomerene Act. The definition of "antitrust laws" is intended to be all inclusive of both Federal and State statutes prescribing the competitive norms within the marketplace. Within the Federal jurisdiction this includes the Sherman Act, the Clayton Act, the Wilson Tariff Act, and the Federal Trade Commission Act. The remaining definitions in section 203 are self-explanatory. It should be noted that the amendments to the Webb Act contained in title II are expanded to include qualified "export trading companies" as well as Webb associations.

Section 204 of title II amends sections 2 and 4 of the Webb-Pomerene Act (15 U.S.C. sections 62 and 64) establishes the scope of the antitrust exemption. Section 2 of the Webb-Pomerene Act exempts from the application of the Sherman and Clayton Antitrust Acts—specifically sections 1 to 7 of title 15 of the United States Code—any Webb association that is established for the sole purpose of engaging in export trade; does not restrain trade in the United States; does not restrain the export trade of any domestic competitor of the association; that does not artificially or intentionally enhance or depress prices within the United States of commodities of the class exported by the association; or does not substantially lessen competition within the United States.

Section 4 of the Webb-Pomerene Act extends the jurisdiction of the Federal Trade Commission Act to include unfair methods of competition used in export trade even though the acts were engaged in outside the United States.

Section 204 of title II establishes a new section 2 to the Webb-Pomerene Act. Section 2(a) sets out the eligibility criteria for the antitrust exemption afforded under the act for export trade associations and trading companies. Section 2(a) establishes six eligibility criteria. They are that the association or trading company and their export trade activities:

First. "Serve to preserve or promote export trade";

Second. "Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association";

Third. "Do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association";

Fourth. "Do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association";

Fifth. "Do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members"; and,

Sixth. "Do not constitute trade or commerce in the licensing of patents, technology, trademarks, or knowledge, except as incidental to the sale of goods, wares, merchandise, or services exported by the association or export trading company or its members."

With the exception of the requirements in paragraphs (1), (4) and (6) of section 2(a) of the act—provisions that impose additional criteria for eligibility in addition to those found in the standards of the current Webb-Pomerene Act—the substantive law of antitrust as modified by the amended Webb-Pomerene Act has not been altered. The amendment of the Webb-Pomerene Act by section 204(a) of title II of S. 734, with the exceptions as noted, is a codification of court interpretations of the Webb-Pomerene exemption to the domestic antitrust laws. In this regard I make specific reference to the decision in United States against Minnesota Mining and Manufacturing Co. which I alluded to earlier in my remarks. Also, the amendment is consistent with the present enforcement policy of both the Department of Justice and the Federal Trade Commission.

As stated by Ky Ewing, Deputy Assistant Attorney General, Antitrust Division, Justice Department, during hearings on S. 864—now title II to S. 734—before the International Finance Subcommittee of the Senate Banking Committee on September 18, 1979:

> We note (that S. 864) would require that a restraint of U.S. domestic trade be substantial before the exemption would disappear. The purpose of this proposal . . . is to bring the Act into what we conceive to be the current state of antitrust law interpreted by the court. (September 17, 18 hearing record on Export Trading and Trade Association, p. 138).

Similarly, Daniel Schwartz, Deputy Director, Bureau of Competition, Federal Trade Commission, testified that the antitrust standards specified in S. 864 "are essentially equivalent to the standards of the Webb-Pomerene Act." (September 17, 18 hearing record on Export Trading and Trade Associations, p. 194.)

In his prepared statement, Mr. Ewing further explained that—

> The judicially accepted legal threshold test for applicability of the Sherman Act to activity abroad places a heavier burden on government and private plaintiffs than that applicable domestically. The presence of a substantial and foreseeable effect on U.S. domestic or foreign commerce is required, not merely some minimal effect. (September 17, 18 hearing record on Export Trading and Trade Associations, p. 144.)

Mr. Ewing also noted in his testimony before the subcommittee that—

> The Department of Justice has long predicated its enforcement efforts in export related matters upon the ability to prove a substantial and foreseeable effect on U.S. commerce. (September 17, 18 hearing record on Export Trading and Trade Associations, pp. 154–155.)

Mr. HEINZ. Will the Senator from Missouri yield for a question on section 204(a)?

Mr. DANFORTH. Yes.

Mr. HEINZ. If section 204(a) is nothing more than a codification of not only current judicial understanding of section 2 of the Webb Act but also the enforcement intent of both the Department of Justice and the Federal Trade Commission, why was it necessary to amend this section of the Webb Act with the exception of paragraphs (1), (4), and (6) as you noted?

Mr. DANFORTH. The amendment is necessary to provide certainty to the business community in their international trade activities, assuring them that their activities do not run afoul of domestic antitrust laws. This is accomplished by establishing a certification procedure and by codifying not only present applicable case law but also the enforcement intentions of the antitrust oversight branches of our Government. Two examples will suffice. Under the present Webb-Pomerene Act if an activity of a Webb association is "in restraint of trade within the United States"—section 2 of the Webb-Pomerene Act—then the international trading activity of that association is not exempt from prosecution under the antitrust laws. When is a "restraint" actionable? When it is de-minimus, insignificant, something more than inconsequential, substantial, or just what kind of measurement is to be employed?

The Court in Minnesota Mining held that the restraint has to be something more than the inevitable consequences of the joint activity of competitors. The Department of Justice stated its enforcement intent under the Webb Act to be against joint exporting activities that have a substantial and foreseeable restraint on domestic trade. It would seem to this Senator that for the business community to be sure as to the circumstances under which its international trade conduct is to be held accountable, that the test judging the conduct be written in law. It is for this reason that "substan-

tial" modifies the phrase "restraint of trade" and "substantially" modifies "lessening of competition" in section 2(a) of the act.

A second example relates to section 2 of the Webb-Pomerene Act which states that a joint exporting activity which "artificially or intentionally enhances or depresses prices within the United States" is outside the scope of the antitrust exemption provided by the act. The point I wish to make here is that for a business venture to rely on such a test—"artificially or intentionally"—is to place reliance on a standard which give a false sense of security to joint exporting activities. The courts in the area of antitrust jurisprudence have developed a test that looks not to the mind—intent of the actors—but to the foreseeable consequences of their actions—the effect. It is for this reason that under paragraph 3 of section 2(a) of the act, the eligibility criteria is that the joint exporting activity does not "unreasonably enhance, stabilize or depress prices within the United States * * *," a test that looks to the effect of the actions not at the intent of the actors.

Mr. HEINZ. I thank the Senator from Missouri for his explanation.

Mr. DANFORTH. It should be noted that the eligibility criteria found in paragraph (6) of section 2(a) of the act requires nothing more than a determination by the Secretary that the international trading activity of the trade association or export trading company not be solely trade in the "licensing of patents, technology, trademarks, or know-how" with the exception that such trade may be present if it is incidental to the sale of goods or services. It is the purpose of S. 2718 to further U.S. export trade in goods and services and not to promote trade in processes or ideas that could well result in the opposite effect occurring.

Mr. President, under section 2(b) of the act an export trade association, export trading company and their respective members that have their trade, trade activities, and methods of operation certified according to the procedures set forth under section 4 of the act and carried out in conformity therewith are exempt from the operation of the antitrust laws be it private or sovereign—State or Federal—enforcement of those laws. The immunity from prosecution under the antitrust laws is complete from the day the certification goes into effect until it is either revoked or rendered invalid pursuant to actions taken under section 4 (d) or (e) of the act. If a revocation or invalidation occurs under the act, the loss of immunity is prospective only.

Mr. HEINZ. Will the Senator from Missouri yield for an injuiry?

Mr. DANFORTH. Yes.

Mr. HEINZ. Would the Senator, for the benefit of his colleagues, and as the author of title II of S. 734 explain how the antitrust immunity provided under title II, which attaches after certification, differs from the antitrust immunity afforded under the current Webb-Pomerene Act,

Mr. DANFORTH. I would. Under current law, a Webb-Pomerene association that complies with the filing requirements of section 5 of the Webb Act and which is not in violation of the substantive law standards of section 2 of the Webb-Pomerene Act is exempt from the operation of the antitrust laws but only as to those sections of the Sherman and Clayton statutes set out in the Webb-Pomerene statute. Further, neither the fact of immunity nor the extent thereof is known until an association is sued and obtains a judicial determination that section 2 of the Webb-Pomerene Act has not been violated. What the Webb association has is only a hope. A case in point is United States against United States Alkali Export Association (Southern District of New York, 1944).

In that case a Webb association was charged with entering into agreements with foreign cartels for the purpose of dividing world alkali markets, assigning international quotas, and fixing prices in certain territories other than the United States. The Webb association admitted the agreements but asserted in defense that it had complied with the filing requirements of section 5 of the statute, that its activities were not in violation of section 2 of the statute and therefore the association was immune from prosecution under the antitrust laws. Notwithstanding the association's belief that it was in compliance with the law, the court found to the contrary. The court's holding placed the arrangements employed by the alkali association outside the protective provisions of the Webb Act and exposed the association to liability under the antitrust laws. The Webb association which was organized in 1919 found out, after appeals, that the antitrust immunity which it believed it had for 40 years did in fact not exist.

Under the procedures established by title II of St. 734, a Webb association—or for that matter an export trading company—whose export trade activities have been certified and which association or company acts within that certification knows for certain that those activities are exempt from both private and sovereign enforcement of either State or Federal antitrust laws. The latter, besides encompassing the Sherman and Clayton antitrust laws and the Wilson Tariff Act includes the antitrust provisions of the Federal Trade Commission Act, sections 5 and 6 thereof. The certainty provided through the certification process is not lost until action is taken pursuant to the provisions of title II either to revoke or invalidate the certification. If the latter occurs, the loss of the antitrust exemption is prospective—for future conduct only.

Mr. HEINZ. I thank the Senator. I can see that title II provides certainty to Webb associations and trading companies as to what activities they may undertake without fear of prosecution or suit under the antitrust laws.

Mr. DANFORTH. Under section 2(c) of the act, when a certificate is issued by the Commerce Department, and the Department of Justice or Federal Trade Commission has previously advised the Department of Commerce of its disagreement with a determination to issue a certificate granting immunity under the act, the immunity from the operation of the antitrust laws is held in abeyance for 30 days. This provision is applicable to the issuance of a certificate under section 4(b).

Section 205, Mr. President, provides conforming changes in style to section 3 of the Webb-Pomerene Act (15 United States Code, section 63).

Section 206 amends sections 4 and 5 of the Webb-Pomerene Act (15 United States Code, sections 64 and 65) and adds an additional seven sections to the act. Section 4 of the Webb-Pomerene Act extended the jurisdiction of the Federal Trade Commission Act to include States. Under title II both the Department of Justice and the Federal Trade Commission have authority to seek invalidation of a certificate when the export trade, activities, or methods of operation of the association or trading company no longer meet the requirements of section 2 of the act. One of the eligibility criteria under the act, specifically paragraph (4) of section 2(a), is that of "unfair methods of competition," an antitrust standard uniquely within the expertise of the Federal Trade Commission and a standard which establishes a norm of competitive behavior prescribed by section 5 of the Federal Trade Commission Act. While under the current Webb Act there exists no exemption for joint exporting activity that may be found to violate section 5 of the Federal Trade Commission Act, such an exemption is provided under title II of S. 734.

Section 5 of the Webb-Pomerene Act establishes administrative requirements for associations operating under the act. Each association, within 30 days after its formation, has to submit a statement to the Federal Trade Commission giving details concerning its certificate of incorportion and bylaws. The association must also furnish to the Commission such information as the Commission requests. The Commission may also investigate associations if it believes that the law may have been violated. Recommendations for readjustment can be made by the Commission and if the association does not comply with the recommendations the Commission may refer its findings to the Department of Justice for any appropriate action. Under the present Webb-Pomerene law a Webb association mination was rendered that section 2 of that complies with the filing requirements of section 5 would not know if it had an immunity from the operation of the antitrust laws until a judicial deter-the Webb-Pomerene Act had not been violated.

Mr. President, section 206 of title II provides a new section 4 to the Webb-Pomerene Act. Section 4(a) establishes the procedure to apply for certification as either an export trade association or export trading company. The section, specifically paragraphs (1) through (9), describes the information to be included in the application for certification which paragraphs I believe are self-explanatory. Most notable of the informational filing requirements are a description of the circumstances showing that the association or export trading company will

serve a need in promoting the export trade in the goods or services involved, a description of the methods by which the association or company intends to conduct its export trade and any other information which is reasonably available to the applying parties and which is necessary for the grant of certification.

Under section 4(b)(1) the Secretary of Commerce is required to certify an association or company within 90 days after receiving the application. During this 90-day period the Secretary will have the opportunity to consult with both the Department of Justice and the Federal Trade Commission. The purpose for the consultation is to provide an opportunity for the two antitrust enforcement agencies of our government to share with the Secretray of Commerce their respective analysis of and any concerns they may have relative to the eligibility criteria of the act, section 2(a).

Under section 4(b)(1) an association or company will be granted a certificate upon a determination by the Secretary that first, the association or trading company and their respective export trade, trade activities and methods of operation meet the requirements of section 2 of the act and second, that the association or company and their respective activities will serve a specified need in the promotion of the applicable export trade.

Mr. HEINZ. Will the Senator from Missouri yield for a question?

Mr. DANFORTH. Yes.

Mr. HEINZ. There has been some concern raised as to the application of the "needs test" in title II of S. 734. As the Senator from Missouri is aware, in its report to the President and the Attorney General on January 22, 1979, the National Commission for the Review of Antitrust Laws and Procedures concluded that if the Congress determines that it is necessary to continue the Webb-Pomerene exemption it should seriously consider that before any immunity from the operation of the antitrust laws is afforded an association of joint exporters the latter 'be required to make a showing of need." Under section 2(a) of the act, specifically paragraph (1), one of the eligibility criteria for ascertaining whether a certification is to be issued is whether the joint exporting activities "serve to preserve or promote export trade." How is the eligibility criteria of section 2(a)(1) related, if at all, first to the needs showing under section 4(a)(6) and second to the needs determination required of the Secretary under section 4(b)(1)?

Mr. DANFORTH. There is no relationship.

Mr. HEINZ. Would the Senator then explain what is required in the showing of a specified need under section 4 and the reason for the eligibility criteria of paragraph (1) of section 2(a)?

Mr. DANFORTH. The reason for providing an exemption from the operation of the antitrust laws for the joint exporting activities of either a Webb association or export trading company is that without such an exemption, and an exemption which is certain, it would not be reasonable to conclude that such joint exporting activities would be undertaken except on an infrequent basis. Therefore, to encourage such activity, an exemption is available. However, the exemption should only be utilized to preserve, that is to say maintain the status quo, or promote, that is to say add to, export trade. To be eligible for the exemption such a finding—that the association or trading company will preserve or promote export trade—should be made by the Secretary of Commerce. Further, since the existence of that fact is one of six eligibility criteria, the finding would be subject to judicial consideration under a section 4(e) action.

On the other hand, the determination by the Secretary under section 4(b)(1) utilizing information tendered pursuant to section 4(a)(6) is not subject to judicial consideration under a section 4(e) action. The reason behind requiring the Secretary to not only determine that the six eligibility criteria of section 2(a) will be met but that the activities of the Webb association or export trading company will serve a specified need in promoting the export trade covered by the certification is simple.

It was believed that those seeking to avail themselves of the benefit of the Webb-Pomerene exemption should come forward and share with the oversight agency, the Department of Commerce, the reasons they believe their activities will be in furtherance of the export trade of our Nation. The needs demonstration required by section 4 of the act is nothing more than a subjective explanation by the association or trading company as to how its activities will further U.S. trade. The Secretary in his determination will either agree or disagree with that evaluation.

Mr. HEINZ. I thank the Senator. I, too, believe that the needs showing within section 4 contemplates nothing more than a subjective explanation by the Webb association or trading company that the activities of the association or company will further U.S. export trade.

Mr. DANFORTH. Mr. President, the Secretary, under section 4(b)(1) must specify in the certificate the permissible export trade, trade activities, and methods of operation of the association or company. The immunity from the operation of the antitrust laws provided by section 2(b) of the act applies to those enumerated activities.

Under section 4(b)(1) the Secretary must issue the cetrificate or deny the application 90-calendar days after an application is filed but may extend that process by an additional 30 days with the agreement of the applicant. After an application is filed, by the 45th day, the Secretary is to delivery to the Attorney General and the Federal Trade Commission a copy of any certificate the Secretary proposes to issue. No later than 15 days thereafter—in the case of a certificate delivered on the 45th day, by the 60th day—the Attorney General or Commission may give written notice of an intent to offer advice on the determination. If the Commission or Attorney General does not respond within the 15-day period or formally advises the Secretary of no disagreement with his intent to issue a certificate then the Secretary may issue a certificate at any time.

If the Attorney General or Commission advises the Secretary of an intent to offer advice on the application, then such advice must be provided the Secretary within 45 days of the date the Attorney General or Commission received from the Secretary a copy of the proposed certification. In the case of the Attorney General or Commission notifying the Secretary of Commerce of his intention to offer formal advice on the 60th day after the certificate has been filed the formal advice must be given by the 90th day, since the proposed certificate was tendered to each agency on the 45th day.

The extension of time afforded under section 4(b) applies only to the granting of the certificate and not to the time during which the Attorney General or Commission is obligated to act.

Mr. HEINZ. Would the Senator yield for a question on section 4(b)(1)?

Mr. DANFORTH. Yes.

Mr. HEINZ. What is the purpose of the last sentence of section 4(b)(1)? Is it not the intent of the author of this title that the two respective antitrust enforcement agencies establish a process similar to that utilized for enforcement of the domestic antitrust laws whereby they will reconcile any potential conflict as to which agency will enforce its respective law against a given company or industry in a manner so that all those concerned know that one or the other agency will assume primary jurisdiction?

Mr. DANFORTH. Yes, that is the intent.

Mr. HEINZ. I thank the Senator.

Mr. DANFORTH. Mr. President, section 4(b)(2) of the act provides that an association may request expedited consideration on its application. The time constraints in section 4(b)(1) must still be honored but it is expected that if a need is demonstrated, justifying expedition, then all affected agencies will act in due speed.

Section 4(b)(3) provides automatic certification for existing Webb-Pomerene associations which request such certification within 180 days after enactment of the act. Under the amendment, the certification process for existing Webb-Pomerene associations is to comport with the process applicable to other associations seeking certification under the act, with two exceptions: First, under paragraph (3) of section 4(b) the Secretary's review of the application for certification is to be summary in nature. Specifically, the Secretary is required to determine whether the application shows "on its face" whether a certificate should issue. It is further stated that unless the Secretary "possesses information clearly indicating that the requirements of section 2(a) are not met"—again, by looking at the application on its face and having available the advice of the Department of Justice or Federal Trade Commission—the Secretary must issue the certificate for the export trade, export trade activities and methods of operation that meet the requirements of section 2(a) of the act. Second, when issuing a certificate pursuant to paragraph (3) of section 4(b) the Secretary need not deter-

mine that the association and its activities will serve a specified need in promoting the export trade of the goods, wares, merchandise or services described in the application. An existing Webb-Pomerene association need not have to demonstrate that its existence is in furtherance of U.S. export trade. Such will be presumed.

Section 4(b)(4) provides a mechanism whereby an association whose application for certification or amendment thereto is denied is to be afforded a hearing with respect to that determination pursuant to section 557 of title 5 of the United States Code.

Section 4(b)(4) provides a mechanism whereby an association whose application for certification or amendment thereto is denied is to be afforded a hearing for reconsideration with respect to that determination.

Section 4(c) of the act requires that after certification, if there occurs a material change—meaning something more than inconsequential—related to the association or trading company's membership, trade activities or methods of operation, then an affirmative duty on the part of the association or company exists to report the change to the Department of Commerce. At the time the report is made the association or company may request that its certification be amended.

The antitrust immunity provided by the act continues uninterrupted if the material change subsequently becomes incorporated into the certification through approval by the Secretary of Commerce. It should be noted that upon the failure of the Secretary of Commerce to approve the change such failure does not affect the scope of the underlying certification except as to that part relevant to the material change.

Under section 4(d) the Secretary, after notification to an association or trading company and after affording it a hearing, may require that the association or company amend its organization or methods of operation to correspond to its grant of certification. Further, if the Secretary determines that the eligibility criteria of section 2(a) of the act are no longer met, the Secretary must either revoke the certification or himself make such amendments to the certification to satisfy the eligibility criteria of the act.

Mr. President, section 4(e)(1) authorizes either the Department of Justice or the Federal Trade Commission to bring an action to invalidate, in whole or in part, the certification granted to an association or trading company on the grounds that the eligibility criteria of section 2 of the act are no longer being met.

Once an association or trading company's export trading activity has been certified under the act, the only action provided by law against the association, trading company or their respective members would be either a self-initiated action by the Secretary under section 4(d) of the act or an action by the Department of Justice or Federal Trade Commission under section 4(e) of the act.

Mr. HEINZ. Will the Senator yield for a question on section 4(e) of the act?

Mr. DANFORTH. Yes.

Mr. HEINZ. Would a private party have a cause of action against a Webb association, trading company or their respective members under the Federal, or for that matter, State antitrust laws for injury to it?

Mr. DANFORTH. Section 4(e)(3) of the act provides that only the Department of Justice or the Federal Trade Commission has standing to bring a cause of action in court against a trading company or Webb association for violation of section 2 of the act. Therefore, apart from the complained against activity being ultra vires to the certification, a private party has no standing to bring suit. However, after a certificate has been revoked or invalidated, a private party could have standing to bring an action under the antitrust laws based on activities subsequent to the revocation or invalidation.

Where a private cause of action has been initiated, claiming that a Webb association is acting ultra vires to its certification, a court would not be able to infer from the acts of the Webb association any anticompetitive effect or intent until it first determines that the acts of the association were in fact ultra vires to the certification. If an ultra vires act is determined to be present, then the court may proceed with its inquiry and determine whether it may infer from that ultra vires act the requisite intent and anticompetitive effect under the antitrust laws.

I would also point out that a private party who may be "aggrieved by an order of an appropriate banking agency" pursuant to section 105(e)(1) of S. 734 (title I of the legislation) may not employ the broad standing provision of section 105(e)(1) in order to obtain standing against an export trading company or association with respect to its export trade, trade activities and methods of operation.

Mr. HEINZ. I thank the Senator.

Mr. DANFORTH. Under section 4(e)(1), before the Department of Justice or Federal Trade Commission may sue to invalidate a certification, it is required to notify the affected parties 30 calendar days in advance. It is anticipated that this 30-day period will allow sufficient time for the parties to resolve their differences, if at all possible. The 30-day notification period is not applicable to an action seeking a restraining order under section 4(e)(2).

The authority of the district court under an action for invalidation is to consider the issues de novo. The only issues that are before the court are whether the requirements of section 2(a) of the act, the eligibility criteria, are being complied with by the association or trading company. While the Secretary of Commerce must consider the requirements of section 2(a) and determine that the activities of the association or trading company will serve a specified need in promoting the applicable export trade in order to issue a certificate, the specified need determination of the Secretary is not an issue which is subject to consideration by the district court in a section 4(e)(1) action.

The district court in a section 4(c)(1) action may either issue an order invalidating the certificate, after which the association or company may continue to exist but does so without the protection of the antitrust immunity of section 2(b) of the act, or require the association or company to modify its organization or methods of operation in order to comply with the requirements of section 2(a) of the act.

Under section 4(e)(2), during the 30-day period, the effective date of the grant of certification is held in abeyance, the Department of Justice or Federal Trade Commission may seek an applicable order prohibiting the certificate from taking effect. It is anticipated this right of action granted by section 4(e)(2) will be used sparingly. This provision for a temporary restraining order or prohibition is applicable to the issuance of a certificate pursuant to section 4 of the act. Further, the common law requirements applicable to the granting of either a temporary restraining order or preliminary injunction must be met by the moving party before the court can issue such an order. Congress means for this not to be an easy burden to overcome.

The provision for the restraining order or prohibition was added at the request of the Department of Justice. It exists as a safety valve where, in the opinion of the antitrust enforcement agencies of our Government, the Secretary of Commerce intends to issue a certification to either a Webb association or a trading company and there exists, on the face of the certification, obvious violations of section 2 of the act. The sole issue before the court is whether on the face of the certification there exists such obvious violations of section 2 of the act that a restraining order or prohibition must be issued.

Under section 4(f) trading companies and associations are obligated to comply with U.S. export control laws. Under section 4(g) final orders of the Secretary of Commerce are subject to judicial review under chapter 7 of title 5 of the U.S. Code.

Mr. President, section 5 of the act mandates that within 90 days after enactment, the Secretary of Commerce, after consulting with both the Department of Justice and the Federal Trade Commission, publish proposed guidelines. The guidelines are to relate to the process by which the Secretary of Commerce will reach his determinations under section 4 relative to whether the requirements of section 2 of the act are being met. The guidelines shall be periodically reviewed and revised where warranted.

Sections 6 and 7 of the act are self-explanatory. Section 8 of the act requires that portions of applications, amendments and annual reports that contain trade secrets or confidential business or financial information, which if disclosed could competitively harm the party submitting the information, be held confidential and not disclosed except as provided under section 9(b). The latter section, under specific circumstances, allows disclosure to the Attorney General or Federal Trade Commission. Sections 9, 10, and 11 of the act, I believe, are also self-explanatory.

Mr. President, section 207 of title II would add a new section to the Webb-Pomerene Act. The purpose of this new section would be to grandfather existing Webb-Pomerene associations so that their ongoing operations would not be affected by the changes to the Webb-Pomerene Act proposed by title II of S. 734.

I believe, Mr. President, that any export trade legislation must insure that existing Webb-Pomerene associations have the election to continue their operations unimpeded. Existing association operations that involve many millions of dollars of capital investment, long-standing course of dealings and long term contractual obligations should not be jeopardized. Care must be taken to insure that there is no temporal discontinuity with regard to the antitrust immunity enjoyed by such associations and that any modified system of antitrust immunity be, at a minimum, coextensive with what immunity currently is available to Webb-Pomerene associations.

The provisions of section 207 would permit Webb-Pomerene associations in existence as of January 1, 1981 to continue to function under the provisions of the prior law if they so elect. Further, section 207 would authorize Webb-Pomerene associations in existence on January 1, 1981 to apply at any time for certification under the revised act.

The proposed section 207 reflects a recognition that existing associations differ from new potential applicants because they have invested time, personnel and resources in reliance on the present exemption. Its provisions would encourage application for intended benefits of certification, while at the same time making clear that there is no desire to impose that process or to jeopardize or dislocate those who have lawful investments and activities presently in place which in 1980 contributed in excess of $2 billion annually to our Nation's balance of trade. Those associations who seek certification are allowed to decide whether they will accept it. They thus are assured that to seek certification will not put at risk any of their existing investment. In essence this is the same choice facing all applicants: freedom to choose the benefits of the new law or to remain under the status quo.

UP AMENDMENT NO. 59

Mr. EXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Nebraska (Mr. EXON) proposes an unprinted amendment numbered 59:

At the appropriate place, add the following section:

schedule of phased decontrol of natural gas prices embodied in the Natural Gas Policy Act of 1978 continues to be sound public policy which should not be altered."

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, this is an amendment which expresses that it is the sense of the Senate to support the objectives of the Natural Gas Policy Act which has to do with phased decontrol of natural gas under title I of the Natural Gas Policy Act of 1978.

The administration has voiced some support for accelerating the schedule set forth in this act decontrolling the wellhead price of natural gas.

This resolution which I present to the Senate today would send a clear message to the administration and the Nation that this body does not support immediate decontrol of natural gas prices.

The overriding purpose of the 1978 act was to encourage more domestic natural gas production by gradually decontrolling prices.

The overwhelming conclusion by the industry is that the aim of title I is succeeding.

Domestic natural gas production increase in 1979 from about 19.3 trillion cubic feet in 1978 to 19.9 trillion cubic feet, the first increase since 1972.

Additions to proven reserves in 1979 increased 35 percent over 1978 figures.

In fact, the gas industry is currently experiencing a significant surplus of gas supplies. Industry sources have indicated that there is perhaps even more gas to sell than the pipeline has places or buyers to purchase the product.

The NGPA established a gradual decontrol schedule for new gas. The price is allowed to go up monthly and at an annual rate of the annual rate of inflation plus 4 percent until 1985.

(Mr. QUAYLE assumed the chair.)

Mr. EXON. Consumers, of course, will feel the increases regardless of the different pricing categories. The pipelines purchase both old and new gas from producers, and even though two-thirds of our total supply is characterized as old gas, sales are made on a rolled-in price basis where the cost of old and new gas is averaged together in the retail price.

The phased decontrol schedule contemplated in the 1978 act was a compromise measure, designed to protect consumers as well as provide incentives to producers. The administration's consideration to accelerate decontrol will destroy the delicate balance of that compromise which was hammered out in several endless days of committee work. Accelerating decontrol of natural gas prices will dramatically tip the scales in favor of the gas producers.

Mr. President, the Nation's largest gas producers are not unfamiliar players in our continuing energy policy debate. Such firms as Exxon, Texaco, Gulf, Shell, Mobil, Amoco, and Union Oil produce more than 40 percent of our domestic supply of natural gas. Decontrolling natural gas will only accelerate the gusher of profits which the major oil companies have realized from OPEC price hikes and the administration's recent order to immediately decontrol oil prices. These companies would surely experience another explosion in new profits if the remaining controls on gas are removed.

A recent study by the American Gas Association indicated that under total decontrol the wellhead price of natural gas would rise from the current national average of $1.65 per thousand cubic feet to $4.50 or $5.50 per thousand cubic feet. The AGA study concluded that immediate decontrol would double residential heating bills from an average of $494 per home in 1981, to $897 in 1982.

In my State of Nebraska, where 75 percent of the homes use natural gas, residential users could pay at least $330 more in 1982 if gas prices are immediately decontrolled. Prices to industrial users of gas would also double, increasing the cost of goods and services and pushing the inflation rate beyond its already unbearable limits. A recent study by the Energy Action Educational Foundation stated that natural gas decontrol would add from 3 to 5 percentage points to the Consumer Price Index as workers, farmers, and businesses strive to maintain their standard of living and keep pace with rising energy costs.

Let us not compound the terrible rigors of inflation at this time by even considering deregulation of natural gas. If we are really and truly concerned about inflation then we should be against any acceleration in this area.

Mr. President, I quote from the Washington Post of April 4, 1981, in a headline entitled "Food, Fuel Costs Push Price Index Up by 1.6 Percent Rate." I read from the Washington Post:

Part of the increase in the price index for finished goods, as well as the 1.1 percent rise in the companion index for intermediate goods, was a result of large increases in the cost of refined petroleum products. These came in turn from President Reagan's decision to strip away federal price controls on domestic crude oil, and the continued pass-through of Organization of Petroleum Exporting Countries' price hikes.

For instance, the energy component of the finished goods index rose 6.1 percent last month. That includes a 7.5 percent increase in the price of gasoline charged by a refiner. Similarly, the same component of the intermediate goods index—which covers the cost of, say, heating oil to businesses—rose 4.3 percent.

Mr. President, I use those figures merely to bring home once again that despite our efforts, despite our rhetoric, and despite our goal inflation continues to eat America alive, and if we do anything more to dramatically increase inflation, as accelerated decontrol of natural gas certainly would do, in fact, I say, Mr. President, that such action would pale by comparison the President's decontrol early this year of oil prices.

Natural gas decontrol, like oil decontrol, will have an enormous impact on the farming community which is already overburdened by the administration's policies. In addition to emasculating the farm programs, the administration's consideration to decontrol natural gas, like the decontrol of oil prices, will only add to the farmer's cost of production in added fuel prices and agricultural supplies such as insecticides and pesticides manufactured with natural gas. In addition, manufacturers of irrigation equipment, an important commodity to the West, utilize natural gas, and also farmers use gas in conditioning and drying grain. All consumers will, of course, pay for these increases in higher food costs. The additional revenues however, will not be realized by farmers. It is the gas

producers who will be crying all the way to the bank.

The study by the energy action group also estimated that the value of the major oil companies' natural gas reserves would increase to between $1.3 trillion and $1.6 trillion in 1985, a market value increase of between 800 and 940 percent over the value of their reserves on December 31, 1979. Lifting the controls on natural gas could add $500 billion to oil company revenues between 1981 and 1985 compared to $10 or $15 billion which these companies will realize from oil decontrol.

Already, the oil companies cannot spend all of the money they are making. Even though these firms have invested billions in new exploration activities, their remaining cash pot has allowed these companies to buy heavily into other business ventures as well as into coal and related mineral extraction industries. There is currently a shortage in the drilling equipment market as well as in the availability of drilling crews, and, although exploration activity is at a record alltime high increasing some 35 percent over last year, the industry is hard pressed to prove that they would be drilling much more with additional profits.

What more incentive do these producers need, I ask? Under the NGPA all gas discovered after 1977 is allowed to gradually rise in price until 1985 when, as I said, all controls would be lifted. At that time the price of gas could rise to the world selling price of oil. The producers claim this incentive is too stringent, and that the price of gas should track the price of oil not tomorrow, not in 1985, but now.

The producers have cried a lot but have not made a case for the need to allow a perfect equivalency between the price of oil and the price of natural gas. Oil production is much more expensive than gas production, and some industry sources have admitted there is room for price differentials between gas and oil. Neither has the gas-producing industry proved that decontrolling the price of gas will increase the quality of gas available.

In this Senator's mind, it is debatable that free market economics apply to this situation. OPEC sets the price of oil, and after 1985 will set the price of natural gas. Supply and demand principles are unfamiliar terms in this scenario. In a decontrolled natural gas market, the producers will set the price which the pipelines and the utilities will have to pay. Without alternatives, there is little choice in the matter.

As usual, we consumers are also left with few alternatives. Phased decontrol at least cushions the impact of lifting the cap on gas prices.

Mr. President, this Senator is no stranger to the free enterprise system. As a small businessman myself, I certainly believe that we need to reduce Government intrusion where the normal forces of the market will work effectively. I believe however, that the administration's free market enthusiasts who argue that immediate decontrol of natural gas is necessary to insure additional supplies, are failing to look at the realities of their proposal.

In conclusion, Mr. President, the stakes in this decontrol scheme are enormous. Forty million consumers will lose, and a few gas producers—big oil—will gain hundreds of billions of dollars over the next several years. The economy will suffer as inflation soars upward with the ever-increasing costs of energy. Huge shifts of income will move from the Northeast and Midwest to the gas-producing States of the South and Southwest. Phased decontrol will at least cushion, for a time, the shock to consumers, while at the same time signaling producers that higher price incentives are becoming available.

I would urge the Senate to adopt this measure, sending assurances to the American people that at least Congress recognizes the responsibility it bears in formulating our Nation's energy policy. We certainly cannot afford to pursue a free market philosophy which is not tempered with reason and an overriding sense of equity. The public interest surely demands it.

Mr. RIEGLE. Will the Senator yield?

Mr. EXON. I am glad to yield.

Mr. RIEGLE. Mr. President, I commend the Senator for his amendment and for his leadership and I would like to ask unanimous consent to be listed as a cosponsor of his amendment.

Mr. EXON. Mr. President, I certainly appreciate the fact that my friend from Michigan wants to be added as a cosponsor to this amendment. I am happy to ask unanimous consent that his name be added, if there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. I thank the Senator.

Mr. EXON. Mr. President, I think it would be well if I could possibly amplify on this matter just a little bit more. I think that we are all concerned about the very grave difficulties we have with inflation today.

Most of us on this side of the aisles, as well as those on that side of the aisles, have, in most instances, supported the President in his overall goals of trying to reduce the inflationary pressure. I would think and hope that the Senate would accept this proposal, because if it does not, then I think the Senate of the United States is saying very simply that, "No, while we vote for budget cuts and while we want to use supply side economics to continue to try and juice the economy, when it really comes down to doing something about further decontrol of basic energy costs that are killing the average Mr. and Mrs. John Q. Public in the United States today, that when we get into that area we do not want to make a stand. We will let the course of the administration continue."

Now what is the present course of the administration in this particular area? About 2 weeks ago, I was with several other Senators and we had a very interesting discussion at some length with the new Secretary of Energy, the former Governor of South Carolina, Mr. James Edwards, who is not only a former Governor with whom I was associated, but a good friend. Toward the end of that particular discussion involving Members of the U.S. Senate and several of our colleagues from the House side of the Hill, I asked the question:

> Mr. Secretary, what had been or what will be your recommendation to the President of the United States on acceleration of the decontrol of natural gas prices?

His response, Mr. President, was:

> I have made no recommendations to the President at this juncture. We have ordered a study and this study is expected to be completed within the next 60 days.

I suspect, therefore, if the Secretary of Energy's timing was accurate at that time—and I suspect it was—that that would mean sometime within the next 30 days, at the outside, that report would be coming down.

This is clear evidence, it seems to me, as has been widely reported in the press and discussed in the cloakrooms off the Senate floor, that indeed the administration, while not yet having made any final decision, is seriously considering the matter of acceleration of the decontrol of the act that I referred to a few moments ago.

It seems to me, Mr. President, regardless of what the study showed the administration is coming forth with, regardless of that, I think it is critically important that we who are elected here by the people of the United States recognize and realize that the gas producers are now doing very well; that we have more supplies of natural gas now than we ever had before; that the "bubble" in the gas supply lines that we heard a great deal about a few months ago has turned into a huge bulge, and, because of the accelerated drilling for oil, we have had an unanticipated discovery of natural gas supplies.

This being the case, and with the recognition that the people of the United States today are overwhelmed with the increases over which they have little or no control—certainly I feel badly about the fact that gasoline prices at the pump continue to rise. But I recognize that there are other means of transportation if the people can afford it. At the same time, America is a nation that travels on wheels and literally millions of people depend upon their automobiles, which have to run on ever-increasing and staggering costs of gasoline, are a part of their life that they need, that they depend on, and that they have to have. But I recognize that there are some other things that could be done if you have to get from point A to point B.

But when we are talking about natural gas and, as I said earlier, when 75 percent of the people who live in my State depend on natural gas, there is little if any alternative to heating the home during the winter. Therefore, it seems to me, Mr. President, that we should certainly send the signal very loud and send the signal very clear to the administration that the U.S. Senate feels that this would be a wrong time to tamper with that act that was very carefully and time-consumingly put together, which phased out natural gas over a period of time—over a period of time, Mr. President—finally being phased out on January 1, 1985.

Mr. President, I ask unanimous consent that Senator BUMPERS and Senator BIDEN be added as cosponsors.

The PRESIDING OFFICER (Mr. DANFORTH). Without objection, it is so ordered.

Mr. EXON. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ARMSTRONG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, this amendment is a sense of the Senate resolution which reads:

> It is the sense of the Senate that the schedule of phased decontrol of natural gas prices embodied in the Natural Gas Policy Act of 1978 continues to be sound public policy which should not be altered.

That, of course, at the present time, is, as the amendment states, public policy. That is present law. It is what the Senate and the House decided in 1978. As a practical matter, the amendment does nothing that is not already the law of the land. Indeed, it does less, because it is only a sense of the Senate resolution.

It is also clearly nongermane to export trading companies legislation. It is an energy issue. It has nothing to do with the Banking Committee. It has nothing to do with international finance, monetary policy, or export policy.

It is my view that, notwithstanding the fact that it is consistent with current law, it just does not belong on this bill.

I personally might be very sympathetic to the policy expressed. Indeed, that was the policy I voted for in 1978. I might support it if it was on another bill. But let me say to my good friend from Nebraska, I just do not think this is the time or the place to debate an energy subject, not on a Banking Committee bill.

We do not have a time agreement on this bill, so technically the Senator from Nebraska can offer any kind of amendment he wants, for whatever purpose he has in mind. But I am strongly opposed to this amendment being added to this bill.

It also has great potential for doing mischief to our legislation over on the House side. Right now there are three committees of jurisdiction in the House, all of whom have claimed a piece of their equivalent of export trading company legislation: The Foreign Affairs Committee has been very involved in legislation of this kind. The House Banking Committee has been very involved in similar legislation. The House Judiciary Committee has been very involved in title II of the export trading company bill, so much so that some members of the committee have introduced a totally different approach to title II.

As a result, the House made little progress on this legislation last year. They never got it to the floor. Not because of the merits of the legislation, but because of jurisdictional difficulties over on the House side, which we hope they will resolve this year.

Putting this amendment on this bill gives one more committee of jurisdiction a shot at this legislation. It would, at a minimum, invite one more subcommittee and one committee in the House to claim it.

Mr. President, that is just not the kind of help this legislation needs. We want to make the job of the House as easy as possible, not as difficult as possible, which is the effect the amendment of the Senator from Nebraska would have.

I also think, Mr. President, that for us to get into the merits of the issue that the Senator seeks to raise will cause one additional problem, which is to confuse the issue that we will be voting on later today when we finally get to passage of this bill.

If we spend most of our time debating the merits of natural gas decontrol, regardless of how the amendment of the Senator from Nebraska is disposed of, either favorably or unfavorably from his point of view, there are two possible outcomes.

The first outcome is that people who like the result will think that that was what we spent most of our time on and the export trading company bill has somehow become a natural gas bill. Remember, we had a filibuster on this for weeks, with many votes being 48 to 52, 47 to 49. I am concerned that the final vote on this bill might be not what is reflected in the bill but what is reflected in this amendment.

Do we want to make the job of the House easier? Do we want to show people, as a practical matter, that we are all very much for this bill?

Senator PROXMIRE has had more reservations about this bill than anybody else, and we have had our share of disagreements. Nobody has been a stronger or more effective critic of this bill than BILL PROXMIRE. Yet he is a strong supporter of this bill even though he does not think it perfect. This bill passed the Senate last year 77 to 0. I do not want to see it passed 76 to 1. I will be honest with you. I do not want to see it pass 70 to 6. I do not want to see it pass 50 to 40. I want to see it pass by the same overwhelming, unanimous vote that it did last time.

All the amendment of the Senator does, it seems to me, is to cloud the real issues. It does not help this legislation in terms of really giving us a true measure of the support for it that we all know is here in this body.

I understand the Senator is determined to proceed to a recorded vote on this. I understand that Senator BUMPERS wants to make a statement, and I want to move to table the amendment. However, I do not wish to preclude Senator BUMPERS from his statement.

I would like to ask the Senator from Arkansas if he wants some time. I would be happy to yield him some time by unanimous consent.

Mr. EXON. The Senator from Arkansas told me he wants about 3 or 4 minutes. I appreciate very much the offer by the Senator from Pennsylvania to give us some additional time.

Will the Senator yield to me at this time for 3 minutes to answer the objections he has just raised?

Mr. HEINZ. No, this Senator cannot yield that much time, I am afraid. But I am prepared to yield to Senator BUMPERS for a reasonable period of time, if he wants me to yield to him. Otherwise, I will be forced to move to table. I do not wish to foreclose debate, but I do not want to perpetuate the filibuster, either.

Mr. EXON. Mr. President, is the Senator from Pennsylvania indicating that he is not going to give me a chance to respond to his remarks?

Mr. HEINZ. No, the Senator merely declined to yield a half-hour.

Mr. EXON. I beg the Senator's pardon?

Mr. HEINZ. Mr. President, the Senator from Pennsylvania merely declined to yield the Senator one-half hour.

Mr. EXON. Mr. President, I said 3 minutes.

Mr. HEINZ. Oh, I am sorry. I apologize, Mr. President. I understood the Senator to say 30 minutes.

Mr. President, I yield 3 minutes, 4 if he so desires, to the Senator from Nebraska, without my losing my right to the floor.

I apologize to my good friend. I thought he said 30 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. EXON. Mr. President, I thank my friend from Pennsylvania. I was puzzled by his actions. There is a difference between 3 minutes and 30 minutes.

Mr. President, the objections that the Senator from Pennsylvania has to my sense-of-the-Senate resolution in this case are not well founded. I simply point out to the Chair that, on numerous occasions, I have sat on this floor and heard managers of a bill say the same thing that the Senator from Pennsylvania just said with regard to this particular piece of legislation, Mr. President, I simply point out that I wish the Senator would clarify for the Senate the fact that this sense-of-the-Senate resolution would have no effect whatsoever as this bill goes to the House of Representatives.

It is a sense-of-the-Senate resolution and, therefore, would not obstruct the bill at all on the other side of the Hill.

I simply point out to the Senator from Pennsylvania that this sense-of-the-Senate resolution is worded in the same fashion and takes the same form as a Republican-sponsored sense-of-the-Senate resolution 10 days or so ago with regard to sending a message to the President of the United States in the form of a sense-of-the-Senate resolution on another bill that had no direct connection with that, simply saying that it was the sense of the Senate that the grain embargo should be ended. Mine is noth-

ing more and nothing less. If it were appropriate to have that sense-of-the-Senate resolution on the grain embargo, sponsored by those on that side of the aisle in that instance, I suggest, Mr. President, that it is entirely proper for this to be included as I have amended it.

On many occasions, Mr. President, the U.S. Senate has agreed that when we have matters of a critical nature—which I think this is—there is broad interpretation with regard to the amendments to a piece of legislation on the floor.

I yield back to my friend from Pennsylvania, with my thanks.

Mr. HEINZ. Mr. President, how much time does the Senator from Arkansas want?

Mr. BUMPERS. No more than 10 minutes.

I say to the Senator, he is going to be on an airplane with me tonight going to Pittsburgh, and I want us to leave here good friends.

Mr. HEINZ. That may even be possible in 10 minutes.

Mr. President, I ask unanimous consent that I may yield 10 minutes to the Senator from Arkansas without losing my right to the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, first, I want to acknowledge that this amendment may not appear germane to the export trading bill. If this administration had not indicated that it is seriously considering the decontrol of natural gas prices, we could certainly have postponed this amendment until after the recess, to be put on a more appropriate measure. However, there has been much mention in the press about the President's contemplation of decontrol of natural gas prices.

The other day, Secretary of Energy Edwards appeared before the Energy Committee, and this very question came up. I asked him if he had made a recommendation to the President. He said no recommendation had been made, but that it was under study and as soon as they completed the study within the Department of Energy, a recommendation would be made to the President.

I then asked the Secretary what the average price for natural gas in this country is right now. He said he thought it was around $1.50. Actually, it is $1.61 an Mcf—that is a thousand cubic feet of gas.

I then asked Secretary Edwards what the price was for the deep gas in Louisiana, gas found below 15,000 feet.

He did not know, so I told him. I know that the Arkansas-Louisiana Gas Co. is paying between $6.07 and $7 an Mcf.

That means that the controlled price of natural gas is $1.60 per Mcf, but the decontrolled price is $7 per Mcf.

I asked Secretary Edwards if he could give me one reason for believing that all the natural gas in this country would not immediately go to $7 per Mcf if the price was decontrolled. He said that he could not.

Mr. President, decontrol would impose a severe hardship, and I am happy to say that the President cannot decontrol natural gas as he did oil. If he chooses to decontrol natural gas, he must submit it to Congress. I am serving notice here, as I have once before, that the last filibuster on that Natural Gas Policy Act which Senator HEINZ will recall because he and I were among those who slept in the cloakroom for 3 or 4 nights during that one, will be like child's play compared to the one that will take place on this floor if there is any effort to decontrol natural gas any faster than it is being decontrolled right now.

Mr. President, immediately decontrolling natural gas prices would be a grave mistake which would impose further hardships upon Americans without any hope that it will eventually lead to the production of more natural gas.

The current situation demonstrates that fact. Prices are already increasing under the phased decontrol provisions of the Natural Gas Policy Act of 1978.

Mr. President, we are phasing out the price of natural gas right now and I am not very proud of the vote I cast on that right now. I wish I could get it back.

In 1978, the average wellhead price of natural gas was 90.5 cents Mcf. In December 1980, with phased decontrol under the Natural Gas Policy Act, that average had risen to $1.61 per Mcf, an increase of 77 percent. During that same time, however, domestic production barely increased at all, going from an annual production of 19.122 trillon cubic feet in 1978 to 19.295 trillion cubic feet in 1988. That is an increase of 0.9 percent.

Remember that we were told that if we would just decontrol gas, we would find all of it we wanted, but, domestic production has increased only 9/10th of 1 percent since decontrol began. Remember also that the pricing scheme of the NGPA provides every incentive necessary to produce new natural gas and even greater incentives for high-cost gas, or gas which is difficult or risky to produce.

Bear in mind also, Mr. President, that section 102 of the act allowed a price of $1.75 per Mcf for new gas beginning in April, 1977, with inflation adjustments after that, at the rate of inflation plus 3 percent. So prices have been rising by 15 to 17 percent since that time.

Consider the effects of decontrol. The country holds gas reserves of about 200- to 250-billion Mcf. With decontrol, all of that known gas goes up in value by about $5 an Mcf, which means that is a windfall for the oil and gas industry of this country on an order of a trillion dollars.

Section 107 of the act allowed that price for gas from deep wells and also allowed the Federal Energy Regulatory Commission to establish special prices for other high cost gas. So decontrolling natural gas would only provide a windfall for the production of gas which has already been found. It would not encourage production any more than the Natural Gas Policy Act. It would simply increase value of gas already found by hundreds of billions of dollars.

Furthermore, if the oil companies recent acquisitions are any indication, I can tell my colleagues that they will use this money to buy up everything in sight.

I remember during the windfall profit tax debate, the oil companies opposed that tax because, they said, they needed that money to explore for oil and develop synthetic fuel. What have they done? Just in the last few days, they have been repeating the pattern already occurring as a result of oil decontrol. We have become familiar with the news reports, for example, that Standard Oil Co. of California offered to buy Amax, Inc., for $4 billion and that Sohio, which already owns the Old Ben Coal Co., has agreed to purchase the Kennecott Corp. for $1.77 billion. Gulf has also offered to buy Kemmerer Coal and the coal holdings of Republic Steel. The oil companies made one-third of all corporate profits last year.

Seagrams sold its oil interests to buy St. Joe Minerals, although it now appears that it will not succeed. That is $8 billion in the last 60 days offered by the oil companies for nonrelated industries.

Mr. President, it is especially significant that these are purchases, not mergers. The oil companies declared that they needed oil decontrol to get the money to find more oil. Well, they got a lot more money, and, rather than using it to find more oil, they are using it to acquire other companies.

This strategy is especially troublesome in the current economic situation, which requires new investment to enhance productivity. The problem is sufficiently worrisome that we are about to consider a tax bill loaded with provisions designed to encourage new investment. It would be completely inconsistent to decontrol natural gas, take money from those who might make such investments, and give it to companies which will not. That is a breach of faith.

Consider the current economic situation in the world, which, in this administration's view, means we must have more investment capital. So, in a few days or a few weeks or a few months, we will consider a tax bill, the main reason for which is to try to stimulate the economy by inducing people to invest more money. Can we, at the same time, take money by decontrolling gas, the equivalent of the highest tax increase ever imposed on the American people, and give it to the oil industry that takes money from those who might otherwise invest it in another industry, which is supposed to be the whole reason for this administration. It would be inconsistent with this administration's desire to cut taxes.

I can remember when my mother used to complain because our gas bill was $3.50. The other day, I asked a constitutent whether he had received $100 gas bill yet.

He said, that he had not, because he had gotten some $200 and $300 gas bills.

Last January my bill was $156, and that is no big home. Next January, if the price of natural gas is decontrolled, my gas bill will probably be between $400 and $500.

So what we are talking about here is a very serious matter for about 99 percent of the American people.

Finally, Mr. President, consider the ultimate impact on gas price, which would track the Btu equivalent of oil

prices, which, in turn, are dictated by the OPEC cartel. I have spoken of this many times. Thirteen oil ministers from 13 nations sit around the table and decide what the American people are going to pay for oil. When you decontrol gas, they will be deciding what you are going to pay for gas, too.

We have some fine friends in that cartel—Iran and Iraq, for example. You know how they have our best interests at heart when they are setting those prices.

In conclusion, decontrol would be a terrible disaster for the consuming public of America; and those who heat their homes with heating oil are already suffering terribly because of the decontrol of oil prices. Decontrolling natural gas prices would make it even more staggering. Billions and hundreds of billions of dollars will be taken out of the pockets of the American people and transferred into the pockets of the oil companies who made one-third of all the corporate profits made in America last year.

Between now and 1985 we are going to send the OPEC cartel, the equivalent of one-half the value of all the stocks on the New York Stock Exchange. Talk about a transfer of wealth from people who cannot afford it—all in the name of some misguided idea about the free marketplace. The free marketplace is fine, but we should not use it as a kneejerk, litmus test when there is no free market and there is not going to be a free market because of the operation of the OPEC cartel.

A recent study by Energy Action estimated that immediate decontrol would add $626 billion to natural gas prices. More American households depend on natural gas for heating than on any other fuel. In the regions of the country where natural gas use is most intensive, the gas bill for the average household would increase by between $6,000–$7,000 between 1981 and 1985. Energy Action estimated that the greatest increases would occur in the West North Central and East North Central regions of the country, with respective increases of $6,750 and $7,788. This problem will be compounded by the increases in the price of finished products which require natural gas for processing. An example is the manufacture of automobiles, an industry heavily centered in the gas-dependent regions. The inevitable price increases would further depress that industry, thus negating the Federal aid which that industry has already received.

Finally, we must consider natural gas pricing in the international context, because decontrol would free natural gas prices to move up to the Btu-equivalent of the world price of oil. Therefore, decontrol would be a Government action removing protections of the domestic market and allowing that market to be manipulated by an acknowledged cartel. By comparison, before the end of this year, we will probably consider legislation to restrict car imports, even though evidence of unfair trade practices by foreign car manufacturers is less than compelling, and by no stretch of imagination it is as clear as OPEC's inflationary price manipulations. It would be absurd to remove one protection against an acknowledged cartel and to consider adding an import restriction on cars which might have slight justification and which would probably have an inflationary impact by removing cheaper cars from the market.

In short, there is no justification for decontrolling natural gas. It would severely damage the economy, and I urge my colleagues to support the amendment expressing the sense of the Senate that the pricing schedule of the Natural Gas Policy Act not be changed.

I thank the Senator for yielding me time.

Mr. HEINZ. Mr. President, I yield 4 minutes to the Senator from Idaho, without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. I thank the Senator for yielding.

Mr. President, I appreciate the opportunity to give some reassurances to some people who obviously are rather nervous about something, the exact substance of which I am not certain.

I have said repeatedly, and I will say now on the record—I have said it on the record before, and I will repeat it here today—that, so far as the chairman of the Energy and Natural Resources Committee is concerned, we have no expectation to deal with any question concerning the decontrol of natural gas this year. That is a matter of record.

To go beyond that slightly, this is not the time to debate the merits of energy policy on a bill that is totally unrelated to it, and I do not intend to take the time today to talk about energy policy in particular.

However, I do want to indicate that, from the examination of the budget materials that have been submitted to us both by the former administration and as updated by this administration, and as late as the hearings we are in the midst of now, both in the Energy and Natural Resources Committee and the subcommittees of the Appropriations Committee, the budget data reveal to us—and the plans of this administration are—that the Federal Energy Regulatory Commission will continue in its activity administering the provisions of the present legislation that governs the pricing of natural gas in this country.

So, it seems to me that to debate here today a sense-of-the-Senate resolution dealing with a very important part of the energy policy—but only a part of it—is both misplaced and premature.

I understand that the Senator from Pennsylvania, the manager of the bill, will make a motion, at the appropriate time, to table the pending amendment. I will support that motion to table, because I believe that this is not the time to settle the issue of the merits of the question of control or decontrol of natural gas.

There is a study commission which has indicated what the economic consequences will be of changing the pricing regime under which natural gas prices are now controlled; but I think it is clear that that does not mean that immediately on the heels of it they will come forward with a proposal for the immediate decontrol of natural gas.

So far as this Senator can make any assurance to the Members of the Senate on both sides of the aisle, that will not be done through my committee this year. There are no plans to do it. The administration has not asked us to do it.

From what I can discern from the plans of the administration, as revealed by the budgetary submissions with regard to the activities of the various subagencies of the Government that deal with this problem, they intend to be administering the law as it is now written with respect to the pricing of natural gas.

I have indicated that we may look at the Fuel Use Act to determine whether or not we should make any change in the mandatory conversions or allocations of various fuels, including natural gas; but that is totally separate from the issue of whether or not we are going to deal with the decision that Congress made last year to put natural gas on a path toward decontrol of natural gas.

So I hope that when we get to the point of voting on the motion of the Senator from Pennsylvania, we will vote not upon the merits of the issue of control or decontrol of natural gas but will vote upon the motion to table, with the expectation that the issue will be before us later. I hope the motion will be agreed to, so that we can enter that debate at the appropriate time and at the appropriate place.

Mr. HEINZ. Mr. President, I want to make it clear that a vote to table this amendment is not necessarily a vote against the merits of the amendment offered by Senator EXON. I am certain that some people who will vote for tabling would vote for the Exon amendment on its merits, were it offered at the appropriate time and place. Frankly, I feel that way about it.

So, Mr. President, I move to table the Exon amendment.

The PRESIDING OFFICER. The question is on the motion to table the amendment of the Senator from Nebraska.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, I ask unanimous consent to yield to the Senator from Ohio for not to exceed 5 minutes without losing my right to the floor.

The PRESIDING OFFICER. Is there objection to debate being in order notwithstanding the pendency of a motion to table?

Without objection, it is so ordered.

The Senator from Ohio is recognized for 5 minutes.

Mr. METZENBAUM. Mr. President, I came over to support the amendment of the Senator from Nebraska because there cannot be any logical reason to be de-

controlling the price of natural gas in these economic times.

It takes us back to the period when the previous administration proposed to phase decontrol of the price of natural gas. They told us at that time that we had to have phased decontrol because there was a shortage of natural gas in this country and that they had to go out and drill for more gas.

It was hardly 24 hours after the phased decontrol became a reality that the oil companies and the natural gas companies, which are really one and the same, took the caps off their wells and suddenly there was a glut of natural gas in this country. They called it a bubble.

What they did was hold back their product from the marketplace to force up prices. They were successful in doing just that. Then they had to say there was a glut and it was embarrassing to them. But the price continued to go up, and there was plenty of natural gas.

Now we find that the natural gas companies are constantly hammering away at the idea that everyone should convert to natural gas.

But despite all of the price increases, nothing has really happened. The oil and gas companies have not found that much more natural gas. But they have raised the price, and they have taken the caps off the fields where the gas was all the time.

There were 15 separate Government reports indicating that there was an adequately supply of natural gas at the time the Congress considered phased decontrol but that the gas companies were holding it back.

Now we are talking about the possibility of decontrolling natural gas prices entirely. One report says that immediate decontrol will cost the American people $600 billion. Another report indicates that the price of natural gas will double, and I do not doubt any of those assertions. As a matter of fact, a spokesman for Sohio, Standard Oil Company of Ohio, was making a speech in Cleveland the other day, and he stated:

> Mossler predicted, "Today a $100 monthly bill for natural gas will be $1,000 in 1990 if nothing changes."

It goes on to say,

> And we have to prevent that.

Mossler said that the Government must encourage the maximum domestic production and the consumer must conserve that. Yet, every time the consumer conserves heat, the gas companies have increased their prices that much more claiming they needed it in order to achieve a fair return on their investment.

Decontrolling the price of natural gas would be similar to decontrolling the price of oil.

All that decontrol resulted in was higher prices for the oil companies and the American consumer wound up paying the price.

When we originally had the issue about decontrolling the price of natural gas and phasing it in, as the Carter administartion did, they told us that we should not be using natural gas for industrial boilers and that we should not use oil for industrial boilers, that we should use coal, which is in very abundant supply, and much of which comes from my own State. But immediately after we passed the matter of phasing out controls, what happened? Suddenly, Mr. Schlesinger and his team reversed signals said, "Now, we should use more gas for industrial boilers, and that is the way of backing out of oil."

The American people have consistently been misled. The American people have been consistently taken advantage of, and the American people cannot afford to have the price of natural gas decontrolled.

This economy cannot tolerate the decontrol of oil. But if oil decontrol is compounded by the decontrol of natural gas that would indeed be an unbearable burden.

When some of us argued that President Reagan's decision to accelerate the decontrol of the price of oil would raise the inflation rate 1.2 to 1.4 percent, it was pooh-poohed.

But the most recent figures that came out indicate that we were right on target and if anything maybe we were a bit low.

I feel very strongly that the amendment of the Senator from Nebraska, the attachment he would make to this bill, is in the right order.

I think a message should be sent to the administration. As this Senator has said on previous occasions in the Chamber, if there should be an effort to decontrol the price of natural gas, I know that many other Senators would join me in causing a debate on that subject to extend through the days and nights of the Senate.

The Senate cannot tolerate that. I believe we should get on about our business, and I hope that the administration does not see fit to send any action up to this Congress that would effectively decontrol the price of natural gas.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I ask unanimous consent, without losing my right to the floor, to yield 5 minutes to the Senator from Texas.

The PRESIDING OFFICER. Is there objection to the Senator from Texas proceeding for 5 minutes during the pendency of a motion to table?

Without objection, it is so ordered.

Mr. EXON. A parliamentary inquiry.

Mr. BENTSEN. Mr. President, I wish the Chair would not wait so long for that objection, that we move a little earlier on that, if I may.

The PRESIDING OFFICER. Does the Senator from Texas yield for an inquiry?

Mr. BENTSEN. I yield without losing my right to the floor.

The PRESIDING OFFICER. The Senator has that right.

Mr. EXON. Mr. President, the motion to table has been made by the Senator from Pennsylvania. Is that correct?

Mr. HEINZ. It has been withheld.

The PRESIDING OFFICER. The motion to table has been made.

Mr. EXON. Mr. President, I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. EXON. I thank my friend from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, I rise to oppose the amendment of my good friend from Nebraska.

As he probably knows, and I am sure the Senator from Ohio knows, this is one of the most emotional and controversial issues that we can have before the Senate.

I can well recall the debate in 1977 when we went weeks on end debating this issue. I can remember going on through the night as we discussed it. I can recall Senators being awakened and brought here to vote, coming into the Chamber at 3 a.m. to vote on this issue.

That is the kind of a tough, controversial issue this is.

My friend from Ohio says that despite the N.G.P.A. they have not found that much new gas. But I understand that we have had an unprecedented amount of production from below 15,000 feet. We are not having the brownouts we had before and there has even been a net increase in the amount of new gas reserves in this country. We have not been able to accomplish that in oil.

What we have accomplished is to buy some time while we try to make the transition to alternative sources of energy. But it is controversial in every respect. I do not know of any issue that is tougher to iron out on the floor of the Senate.

Are we going to say, without any benefit of hearings on how we might improve the act, make it work any better, that we are going to vote on it now and say it is perfect?

Is there no little change we could make in that piece of legislation? With the time and the experience we have had in seeing which parts of it worked and which were inequitable can we not determine how the act can be improved? We still have time to improve it for the consumer, for the producer, and for industry.

But how do we do that? We do it with hearings, where we let all segments of our society be heard. There can be some improvement, I would assume, for all of these people.

I do not believe we should short-circuit that process.

I do not believe we should close the door on that possibility before we even have the chance to explore it. We should be more deliberative about evaluating our Nation's energy policies.

I am unaware of any decisions that have been made to completely decontrol the price of natural gas, as the distinguished sponsor of the amendment would have us believe. There may be some improvements we can make, and I certainly hope that all concerned will be able to set aside some of the emotion

of this issue so that we can look at improving our Nation's energy supplies, particularly in gas.

Finally, we have to ask ourselves, is this amendment germane to the export trading bill which it hopes to amend? Clearly it is not germane. It is rather an attempt to push through the Senate an early end to the debate on natural gas before it even begins.

So I hope my colleagues will be more deliberative on this emotional issue and reject this amendment of my good friend from Nebraska.

I thank the distinguished Senator.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

Mr. HEINZ. Mr. President, I ask unanimous consent that the Senator from Washington (Mr. JACKSON) be recognized for not to exceed 5 minutes during the pendency of the motion to table.

The PRESIDING OFFICER. Is there objection to the Senator from Washington proceeding for 5 minutes notwithstanding the pendency of a motion to table? No objection being heard, the Senator from Washington is recognized for 5 minutes.

Mr. JACKSON. Mr. President, I thank the senior Senator from Pennsylvania.

I just learned of this amendment a few minutes ago. I believe the timing of the amendment and the procedure here are not wise. As the major author of the amendments to the original Natural Gas Act of 1937, I must speak my mind.

Mr. President, may I say that I agree wholeheartedly with the substance of the pending amendment. I want to report, as we all know I am sure, that the Natural Gas Policy Act is indeed working. There are more rigs out drilling for gas now than at any time in history. We had a net increase in domestic natural gas production last year for the first time, Mr. President, in years.

However, I must disagree with pursuing this amendment at this time, and I emphasize "at this time." The chairman of the Energy Committee, Mr. MCCLURE, has urged the administration not to pursue legislation for decontrol at this time. So, may I point out, Mr. President, Has the chairman of the House Energy and Commerce Committee, Mr. DINGELL? And, if I may add, I also share the view of the chairmen of the Senate and House committees.

I think we are all in agreement that the act is working reasonably well. It may not be perfect, but it is indeed achieving the purpose for which the legislation was intended. It is my view, Mr. President, that tampering with it will create uncertainty, and that is the last thing we need.

Now is not the proper time, nor is this the proper vehicle, to pursue this issue.

If the administration chooses not to heed our collective advice and sends us a bill I want to say right here and now that I will oppose it. I do not mean just ordinary opposition, because I feel very deeply about this subject. I believe that our collective efforts reached an equitable result. We were able to achieve a bipartisan compromise. Our differences of opinion were fought out and resolved.

I think the administration certainly should get the very clear message that amending the Natural Gas Policy Act would not be an easy task. We want to make that very clear.

I would join the ranks of those who would talk a long time, or at length, or any other way you want to describe any sort of extended debate, regarding any decontrol bill.

Finally, Mr. President, this resolution does not provide the proper forum, or afford us time for adequate preparation to discuss the hundreds of issues we would need to discuss in connection with such an important debate.

I will, therefore, support the tabling motion. I want to make it clear why I am supporting it: I must state categorically that I do not oppose the substance of the amendment, but I indeed oppose the procedure here which I do not think gives the consumers, the producers, and the public interest as a whole an opportunity to be heard, to properly ventilate all of the matters that are relevant and pertinent to this matter.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. The yeas and nays have been ordered——

Mr. HEINZ. Mr. President, I ask unanimous consent that during the pendency of the motion to table I may yield first 2 minutes to the Senator from Massachusetts (Mr. TSONGAS).

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The Senator from Massachusetts is recognized for 2 minutes.

Mr. TSONGAS. Mr. President, this amendment presents a dilemma for those of us who are from the Northeast and whose States are reasonably dependent upon natural gas.

But I share the view of the Senator from Washington, that it is premature to bring the issue up like this without serious debate and consideration. I think it does not do justice to the complexity of the issue.

I happen to support decontrol in principle for the obvious reason that energy ought to be priced at its replacement cost in order to assure efficient use and sufficient development of energy. But the specific question of natural gas decontrol depends on a great deal of information not yet available regarding the competitiveness of natural gas markets, projected supply response, availability of substitutes, adequacy of programs to protect the poor, and interregional transfers of wealth. I think that faced with an attempt by the President to deregulate natural gas suddenly, I would join with the Senator from Washington in the extended debate and oppose efforts to eliminate the Natural Gas Policy Act. But I think the issue today is the export trading companies.

The likelihood is that the President will not seek to deregulate natural gas this year. The chairman of the Energy Committee has said he does not think that will take place either. I think on the merits I agree with the Senator from Nebraska but given the issue of time and place rather than substance, I will vote to table and urge my colleagues to do the same. However, I reserve my right to join with the Senator from Nebraska in the future were there to be an attempt to deregulate. But I want to distinguish between the substance of the issue and what indeed we are addressing here today.

I thank the Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I ask unanimous consent that the Senator from Nebraska (Mr. EXON) be yielded 2 minutes without my losing my right to the floor during the pendency of the motion to table.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair, and I thank my friend from Pennsylvania. I also wish to thank the wide range of support I am receiving from my colleagues on the floor for what I am trying to do, but not now.

It brings to mind the old story that I am all for the church but I am not going to give to it because I do not like the location. The fact of the matter is I do not want the new church in the first place.

I am amazed to hear on the floor some of the people who conceded they put together the Natural Gas Policy Act of 1978 saying we should not tamper with it.

Mr. President, this sense-of-the-Senate resolution does not tamper with it at all. It says it was a good act and it says we should continue that. That is all it says.

Let me read it again:

It is the sense of the Senate that the schedule of the phased decontrol of natural gas prices embodied in the Natural Gas Policy Act of 1978 continues to be sound public policy which should not be altered.

I am patting them on the back for the good job they did, and they objected for reasons—unless they are indeed intending to change that well-thought-out measure that they enacted in 1978.

I urge my colleagues to vote against the tabling motion.

I thank my friend from Pennsylvania.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Pennsylvania to lay on the table Mr. EXON's amendment (UP No. 59).

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER), the Senator from Florida (Mrs. HAWKINS), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Illinois (Mr. DIXON), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. BRADLEY) is absent on official business.

The PRESIDING OFFICER (Mr. ABDNOR). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 66, nays 27, as follows:

[Rollcall Vote No. 80 Leg.]

YEAS—66

Abdnor	Goldwater	Melcher
Andrews	Gorton	Mitchell
Armstrong	Grassley	Murkowski
Baker	Hatch	Nickles
Bentsen	Hatfield	Nunn
Boren	Hayakawa	Percy
Boschwitz	Hefiin	Pressler
Burdick	Heinz	Quayle
Byrd, Harry F., Jr.	Helms	Rudman
Cannon	Humphrey	Schmitt
Cochran	Jackson	Simpson
Cohen	Jepsen	Specter
D'Amato	Johnston	Stafford
Danforth	Kassebaum	Stennis
DeConcini	Kasten	Stevens
Denton	Laxalt	Symms
Dole	Leahy	Thurmond
Domenici	Long	Tower
East	Lugar	Tsongas
Ford	Mathias	Wallop
Garn	Mattingly	Warner
Glenn	McClure	Weicker

NAYS—27

Baucus	Exon	Pell
Biden	Hart	Proxmire
Bumpers	Hollings	Pryor
Byrd, Robert C.	Inouye	Randolph
Chafee	Kennedy	Riegle
Chiles	Levin	Roth
Cranston	Matsunaga	Sarbanes
Dodd	Metzenbaum	Sasser
Eagleton	Moynihan	Zorinsky

NOT VOTING—7

Bradley	Hawkins	Williams
Dixon	Huddleston	
Durenberger	Packwood	

So the motion to lay on the table UP amendment No. 59 was agreed to.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. McCLURE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, will the distinguished manager of the bill yield to me so that we may take care of another matter?

Mr. HEINZ. I yield.

SENATE CONCURRENT RESOLUTION 17—PROVIDING FOR ADJOURNMENT OF THE CONGRESS FROM APRIL 10, 1981, TO APRIL 27, 1981

Mr. BAKER. Mr. President, I send to the desk a concurrent resolution and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 17) providing for an adjournment of the Congress from April 10, 1981 to April 27, 1981.

Mr. BAKER. Mr. President, I have conferred with the distinguished minority leader. I believe he is agreeable to disposing of this matter at this time, and I hope that the Senate can dispose of this resolution so we can send it to the other body at this time.

The concurrent resolution (S. Con. Res. 17) was considered and agreed to as follows:

Resolved by the Senate (the House of Representatives concurring), That when the two Houses adjourn on Friday, April 10, 1981, they stand adjourned until 12 o'clock noon on Monday, April 27, 1981.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

GRAYMAIL LEGISLATION: PROTECTING NATIONAL SECURITY IN CRIMINAL CASES

Mr. BIDEN. Mr. President, I was pleased to note last week in reading the Baltimore Sun that the Justice Department is implementing the so-called graymail legislation for the first time in a case in Baltimore. That case involves a former CIA agent charged with embezzling $60,000. The former agent's defense is that the CIA authorized the loans for secret CIA projects. Of course the defendant intends to use that defense as a pretext for pretrial discovery that will force the Government to disclose classified information and "graymail" the Government into dismissing the case. The Classified Information Procedures Act which we developed in the Judiciary Committee last year addresses this problem by providing procedures to protect classified information and restrict frivolous discovery motions in these kinds of cases.

I ask unanimous consent that an article from the April 2 Baltimore Sun describing this case be printed in the RECORD:

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NEW LAW ON CLASSIFIED DATA MAKES DEBUT IN JOLLIFF CASE

A federal judge yesterday appointed a caretaker for secret documents that may be sought by a former CIA employee as evidence in his criminal case, activating for the first time here a new law to guard against public disclosure of classified information.

The temporary appointment was made by U.S. District Court Judge Frank A. Kaufman in the case of Wade A. Jolliff, Jr., who is charged with impersonating a CIA agent and fraudulently obtaining more than $65,000 in loans for purported CIA "operations" while working as head of security at the University of Maryland's Baltimore campus.

Mr. Jolliff, who the FBI said worked for the CIA until 1972, disputes the charges, contending that there are CIA records that will prove he was actually on assignment for the agency while employed at the university's Baltimore campus.

However, concerned that Mr. Jolliff—who had access to secret information while working for the CIA—may be seeking classified information, federal prorsecutors have asked that proceduers outlined in the Classified Information Procedures Act be followed.

The law, enacted last October, would require Mr. Jolliff to disclose in writing what material he is seeking and to prove the relevance to his case of any secret material he may request. The law also requires the appointment of a court security officer to protect any classified documents.

Judge Kaufman temporarily assigned Mary Schwartz, a member of the Security Programs staff of the U.S. attorney's office, to that duty so the case could proceed in time for the April 21 trial. A permanent caretaker will be appointed some time next week from a list of candidates provided by the Justice Department, a Justice Department spokesman said.

The duties of the security officer include making certain that the area where the documents will be reviewed—for example, the judge's chambers—is secure and that no one who does not have CIA clearance sees the information.

According to FBI records, Mr. Jolliff worked 10 years for the CIA until he left in 1972 to work for UM as head of security at the Baltimore campus.

In the grand jury indictment, Mr. Jolliff was accused of obtaining loans from B. Dixon Evander Associates, Inc., an insurance firm, and from other investors in an alleged scheme in which he purported to solicit funds for secret CIA projects.

HEROIN ADDICTION AND STREET CRIME

Mr. BIDEN. Mr. President, as ranking minority member of the Senate Judiciary Committee I am continuing to pursue an issue I began addressing 2 years ago as chairman of the Subcommittee on Criminal Justice. Two years ago the subcommittee began to notice an increase in Southwest Asian heroin in the urban Northeast. I am convinced that heroin addiction is a prime contributor to much of the increasing crime that occurs in this country.

This opinion is supported by most streetwise cops and prosecutors, but now we have supportive research which shows the appalling relationship between heroin addiction and street crime.

A study done by Prof. James Inciardi of the University of Delaware showed that 356 active heroin users were:

First, responsible for 118,134 crimes in 1 year;

Second, over 95 percent reported committing illegal activity in the year period;

Third, 90 percent relied on criminal activity as a means of income; and,

Fourth, most disturbing, is that only 1 of every 413 crimes committed resulted in an arrest.

Additional research completed this past year at the Temple University School of Medicine by Dr. John C. Ball, Dr. Lawrence Rosen, Dr. John A. Flueck, and Dr. David Nurco showed that 243 heroin addicts committed almost 500,000 street crimes in 11 years.

Their research also showed that when these addicts were not dependent on heroin, there was an 84-percent decrease in criminality.

These two studies clearly show that if we could ever control heroin addiction or even reduce it, we would see an appreciable reduction in criminality.

As the new administration begins its war on violent crime it also proposes to cut $5.4 million requested previously by the Drug Enforcement Administration for its Southwest Asian heroin interdiction program, elimination of the State and local drug coordination program, $5.9 million cut for the Federal, State, and local task force programs, and budget cuts to the State Department's international narcotic management program that supports crop substitution overseas. In the treatment area, there will be major cuts in treatment slots and prompted Mr. Julio Martinez of the New York State Division of Substance Abuse Services to say in the New York Times on March 9, 1981:

. . . The cuts in antidrug funding will grind New York's fight against drugs to a near halt and possibly force thousands of addicts and users onto the streets . . .

I am fearful that the administration does not seem to recognize the obvious relationship between heroin and crime. I only point to the alarming increase in crime in the Northeast cities which are also experiencing a flood of cheap Southwest Asian heroin on their streets. In New York City this past year mortality rates due to heroin overdose were up 25 percent and the price of street heroin decreased because of its easy availability.

Mr. President, I ask unanimous consent that the two research documents I refer to be printed in the RECORD in their entirety.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HEROIN USE AND STREET CRIME

(By James A. Inciardi)

The relationship between heroin use and street crime has been studied for the better part of this century, but the findings have been inconclusive. Research in this area has been limited to analyses of criminality in terms of arrest data, and samples have been drawn only from officially known populations of drug users. The present study focuses on a sample of 356 active heroin users from Miami, Florida, and data have been collected describing their officially known and self-reported criminal activity. The data indicate that, while active heroin users are heavily involved in street crime, any relationship between drug use and crime is much more complex than has been generally believed. The findings of the research suggest that the wrong questions may have been asked in previous studies of the drugs/crime nexus.

The relationship between heroin use and street crime represents an issue that has long been studied, argued, and reexamined—yet few definitive conclusions are apparent today. For more than six decades, researchers and opinion makers have addressed the subject, asking such questions as, Do heroin use and addiction cause crime? If so, what ought to be done to manage the problem? Much of the research on this has attempted to determine the sequence of heroin use and criminal activity. Does addition per se lead the user into a life of crime, or do the demands of the addict's life-style force him into criminal behavior? Or, alternatively, is heroin use simply an additional pattern of deviant activity manifested by an already criminal population? The catalog of research has been impressive, at least in terms of sheer quantity.[1]

The findings that have emerged, however, have led to a series of peculiar and contradictory perspectives. Some researchers have found that the criminal histories of their sample cases considerably preceded any evidence of drug use; thus, their conclusion has been that the heroin user is indeed a criminal, and should be treated as such. Others have found in their data that the sequence is in the reverse direction, and have offered us an "enslavement theory" of addiction. Within this perspective, it is suggested that the monopolistic controls over the heroin black market have forced the otherwise law-abiding user into a life of crime in order to support his habit. The answer to the "problem" is simple: Legalize heroin, and the need for crime is removed. And still a third group finds conflicting data: Some members of the samples were drug users first, other members were criminals first, and still others embraced both drug use and crime simultaneously. The conclusion here is that heroin use and crime may not be related at all, but instead result from some third, unknown variable, or some complex set of factors that pervade the user's operating social milieu and greater environment.

Yet any conclusions, hypotheses, and theories from these efforts become meaningless when one considers the awesome biases and deficiencies in the information that has been generated. Data-gathering enterprises on criminal activity have usually restricted themselves to the heroin users' arrest histories, and there can be little argument as to the inadequacy of official statistics as measures of the incidence and prevalence of criminal behavior. Those studies that have gone beyond arrest figures to probe self-reported criminal activity invariably have been limited to small samples of either incarcerated heroin users or users placed in treatment programs. And the few efforts that have been made to locate active heroin users have generally examined their samples' drug-taking behaviors to the exclusion of their drug-seeking behaviors.

In an effort to generate a preliminary and more realistic data base descriptive of the criminal activities of active heroin users, the present study focused during a twelve-month period ending in 1978 on the street community as an information source, using active cases in Miami, Florida.[2]

METHOD

The peculiar life-style, illegal drug-taking and drug-seeking activities, and mobility characteristics of active drug users preclude any examination of this group through standard survey methodology. A sample based on a restricted quota draw was rejected in favor of one derived through the use of a sociometrically oriented model.

In the field site, the author had established extensive contacts within the subcultural drug scene. These represented "starting points" for interviewing. During or after each interview, at a time when the rapport between interviewer and respondent was deemed to be at its highest level, each respondent was requested to identify other current users with whom he or she was acquainted. These persons, in turn, were located and interviewed, and the process was repeated until the social network surrounding each respondent was exhausted. This method, as described, restricted the pool of users interviewed to those who were currently active in the given subcultural knit in the street community and who were "at risk." In addition, it eliminated former users as well as those who were only peripheral to the mainstream of the subcultural half world.

This selection plan does not guarantee a totally unbiased sample. However, the use of several starting points within the same locale eliminated the difficulty of drawing all respondents from one social network. Confidentiality was guaranteed to the respondents, interviewing was done in an anonymous fashion, and each respondent was paid a fee for participating.

This sampling technique resulted in an initial study population of 356 heroin users (see Table 1) who were active in the free community at the time of the interview. Not unlike other populations of drug users, most of the sample cases were males (67 percent), and the majority of both the males and females were unemployed whites, clustered in the eighteen- to thirty-four-year-old age group (see Table 1). Males and females did, however, evidence many pronounced differences in their criminal career patterns.

TABLE 1.—SELECTED CHARACTERISTICS OF 356 ACTIVE HEROIN USERS

Characteristics	Males (n=239)	Females (n=117)
Age:		
17 and under	0.8	3.4
18 to 24	19.2	34.2
25 to 34	64.0	51.3
35 to 49	14.2	9.4
50 and over	0.8	1.7
Median (years)	27.9	26.9
Ethnic background:		
White	52.3	55.6
Black	33.5	24.8
Hispanic	14.2	16.2
Other		3.4
Years of school (median)	11.8	11.7
Employment status:		
Currently employed	49.3	41.9
Unemployment	48.5	53.8
Not in labor force	2.2	4.3
Marital status:		
Never married	45.6	46.2
Married	25.9	13.7
Divorced/separated	26.4	36.8
Widowed	1.7	2.6
No data	0.4	0.9

DRUG USE PATTERNS

The heroin users sampled in this study had long histories of multiple drug involvement, following clear sequential patterns of onset and progression. Both males and females began the use of drugs with alcohol. Their first experiences with alcohol intoxication occurred at median ages of 13.3 and 13.9 years, respectively, with 39.3 percent of the males and 21.4 percent of the females having such an experience before age 12. Furthermore, as indicated in Table 2, progression into the other major drugs followed identical sequential patterns for both sexes. For example, based on median ages of onset, alcohol use was followed by initial drug abuse experimentation at 15.2 years of age, followed by marijuana use, barbiturate use, heroin use, and cocaine use:

TABLE 2.—DRUG USE HISTORIES

Drug use characteristics	Males (n=239)	Females (n=117)
Age of 1st alcohol use (median)	12.8	13.8
Age of 1st alcohol high (median)	13.3	13.9
Ever used alcohol (percent)	95.8	98.3
Age of 1st drug (excluding alcohol) use (median)	15.2	15.2
Age of 1st marihuana use (median)	15.5	15.4
Ever used marihuana (percent)	99.2	99.1
Age of 1st barbiturate use (median)	17.5	17.0
Ever used barbiturates (percent)	84.9	88.0
Age of 1st heroin use (median)	18.7	18.2
Age of 1st cocaine use (median)	19.7	19.7
Ever used cocaine (percent)	92.9	92.3
Median number of drugs ever used[1]	10.3	10.5
Median number of drugs "currently" being used[2]	5.0	5.6
Ever treated for drug use (percent)	56.9	56.4
Currently in treatment (percent)	.4	.9

[1] Includes alcohol, heroin, other narcotics, sedatives, stimulants, antidepressants, hallucinogens, analgesics, and solvents/inhalants.

[2] "Current" use refers to any intake during the 90 days before the interview.

[1] For annotated bibliographies and analyses of these studies, see Research Triangle Institute, *Drug Use and Crime* (Springfield, Va.: National Technical Information Service, 1976); Gregory A. Austin and Daniel J. Lettieri, *Drugs and Crime: The Relationship of Drug Use and Concomitant Criminal Behavior* (Rockville, Md.: National Institute on Drug Abuse, 1976); S. WW. Greenberg and Freda Adler, "Crime and Addiction: An Empirical Analysis of the Literature, 1920–1973," *Contemporary Drug Problems*, vol. 3 (1974), pp. 221–70; and James A. Inciardi, "The Villification of Euphoria: Some Perspectives on an Illusive Issue," *Addictive Diseases*, vol. 1 (1974), pp. 241–67.

[2] These data were generated by DHEW Grant No. 1–R01–DA–0–1827–02, from the Division of Research, National Institute on Drug Abuse.

Substance	Median onset age	
	Males	Females
Alcohol use	12.8	13.8
Alcohol intoxication	13.3	13.9
First drug abuse	15.2	15.2
Marijuana use	15.5	15.4
Barbiturate use	17.5	17.0
Heroin use	18.7	18.2
Cocaine use	19.7	18.7

Curiously, while the females began their careers of substance use one year later than the males, their progression was more rapid and the extent of their drug involvement seemed to be greater. A median of 5.9 years separated the males' initial alcohol experimentation from their first use of heroin at age 18.7. With females, the onset of heroin use was at age 18.2, only 4.4 years after the first use of alcohol. Furthermore, as is shown in Table 2, the females were using a slightly wider variety of drugs than were the males.

CRIMINAL HISTORIES

Early involvement in criminal activity was characteristic of the great majority of the sampled heroin users. As shown in Table 3, 99.6 percent of the males and 98.3 percent of the females reported having ever committed a crime, with the median age of the first criminal act preceding the sixteenth year. The first crimes committed were generally crimes against property, although the specific kind of property crime varied between males and females.

As shown in Table 3, burglary was cited most often by males as the first crime (25.1 percent), followed by shoplifting (20.1 percent), other larcenies (11.7 percent), and drug sales (10.0 percent). In contrast, 38.5 percent of the females reported shoplifting as their first offense, followed by prostitution (18.8 percent) and drug sales (12.8 percent). It might also be noted here that the proportion reporting vehicle theft as the first crime was ten times higher among males than among females; the percentage of violent crime (robbery and assault) was also higher among the male group. For example, while 15.4 percent of the males specified robbery or assault as the first criminal offense, only 6.0 percent of the females indicated one or the other as the first offense.

TABLE 3.—CRIMINAL HISTORIES

Criminal characteristics	Males (n=239)	Females (n=117)
Ever committed offense (percent)	99.6	98.3
Age of first crime (median)	15.1	15.9
First crime committed (percent):		
Robbery	7.9	3.4
Assault	7.5	2.6
Burglary	25.1	5.1
Vehicle theft	9.2	0.9
Shoplifting	20.1	38.5
Other theft/larceny	11.7	6.9
Prostitution		18.8
Drug sales	10.0	12.8
Other/no data	8.1	9.3
Have arrest history (percent)	93.7	83.8
Age at first arrest (median)	17.2	18.3
Total arrests (median)	3.5	2.6
Ever incarcerated (percent)	81.2	62.4

Most of the heroin users studied here had arrest histories, but these typically began more than two years after the initiation of criminal activity (Table 3). Some 93.7 percent of the males reported having been arrested at least once, with the first arrest occurring at a median age of 17.2 years. Slightly fewer females (83.8 percent) had arrest histories, with the initiation into criminal justice processing beginning at a median age of 18.3 years. The data also indicate that the males had more frequent contacts with the criminal justice system (Table 3). The median number of arrests for the males was 3.5, with 81.2 percent having histories of incarceration. In contrast, the females reported a median of 2.6 arrests, with 62.4 percent having been incarcerated. Such differences might be explained by the younger age at which the males initiated their criminal activity and arrest histories, or by the slightly younger age of the female group. However, the expanded arrest figures below, reflecting the nature of the various arrests, may suggest the somewhat more serious, and hence more visible, nature of the males' criminal involvement. For example—

Nature of arrest	Median number of arrests	
	Males	Females
Crimes against property	1.6	0.5
Crimes against persons	.3	.2
Drug law violations	1.4	.8
Public order crimes	.2	1.1

While the male arrest data reflect a greater involvement in crimes against the person, property, or drug laws, the females were more often arrested for the less serious crimes against the public order, primarily prostitution. This would account for the higher rate of incarceration among the male group.

Patterns of drug use support

As indicated below, the heroin users reported a wide variety of sources of support for both their general economic needs and their drug use. For example—

[In percent]

Source of income	Males	Females
Family, friends	12.5	31.6
Legal employment	49.4	43.6
Public assistance	20.0	18.8
Criminal activity	97.4	94.9

While more than 90 percent of both groups relied upon criminal activity as a means of income, most had a second source of funds. However, some 98.7 percent of the males and 96.6 percent of the females reported some form of illegal activity during the twelve months before the interview, and more than 80 percent of this criminality was for drug use support (80.5 percent for males, 87.7 percent for females).

CURRENT CRIMINAL ACTIVITY

The data on current criminal activity clearly demonstrate not only that most of the heroin users were committing crimes, but also that they were doing so extensively and for the purpose of drug use support. Initially, some 98.7 percent of the males reported committing crimes during the twelve-month period prior to interviewer contact, with a median of 80.5 percent of such criminality undertaken for the purpose of supporting a drug habit.

As indicated in Table 4, the 239 male heroin users reported committing 80,644 criminal acts, averaging some 337 offenses per user. While this might be viewed as an astronomical sum, one must consider the relative proportions for each crime category. The violent crimes of robbery and assault, although reaching the considerable figure of almost 3,500, nevertheless represent only 4.3 percent of the total. Similarly, property crimes, while including some 17,846 thefts of various types, account for less than 25 percent of the total figure. On the other hand, a clear majority of the crimes by male heroin users were crimes without victims: Almost 60 percent of the criminal behavior reported here was drug sales, prostitution, gambling, and alcohol offenses, with an additional 8.1 percent of criminal activity involving the buying, selling, or receiving of stolen goods—a secondary level of criminality resulting, in most instances, from the users' initial involvement in property crimes.

TABLE 4.—CRIMINAL ACTIVITY DURING PAST 12 MO, 239 ACTIVE MALE HEROIN USERS

Crime	Total offenses	Percentage of total offenses	Percentage of sample involved	Percentage of offenses resulting in arrest
Robbery	3,328	4.1	46.9	0.3(n=11)
Assault	170	<.2	20.9	.6(n=1)
Burglary	4,093	5.1	69.0	.7(n=30)
Vehicle theft	398	.5	22.6	.5(n=2)
Theft from vehicle	877	1.1	29.3	.7(n=6)
Shoplifting	9,685	12.0	59.4	.2(n=15)
Pickpocketing	11	<.1	.8	
Prostitute theft	62	<.1	1.3	1.6(n=1)
Other theft	1,009	1.3	35.1	.5(n=5)
Forgery/counterfeiting	1,711	2.1	40.2	.4(n=6)
Con games	1,267	1.6	30.1	
Stolen goods	6,527	8.1	59.4	<.1(n=3)
Prostitution	2	<.1	.4	
Procuring	2,819	3.5	30.5	<.1(n=1)
Drug sales	40,897	51.0	91.6	<.2(n=93)
Arson	65	<.1	2.9	
Vandalism	58	<.1	8.8	1.7(n=1)
Fraud	185	.2	12.1	1.1(n=2)
Gambling	6,306	7.8	38.5	<.1(n=3)
Extortion	648	.8	10.0	
Loan sharking	463	.5	13.0	
Alcohol offenses	58	<.1	6.3	10.3(n=6)
All other	5	<.1	2.1	60.0(n=3)
Total	80,644	100.0	100.0	.2(n=189)
Mean number of offenses per subject	337			

These comments are not intended to minimize the amount of serious crime among heroin users. Rather, they emphasize that such criminality is more often victimless crime than predatory crime. On the other hand, these data also indicate that male heroin users have diverse criminal careers. Almost all (91.6 percent) were involved in the sale of drugs; almost half (46.9 percent) also engaged in robberies, 59.4 percent also engaged in shoplifting, and more than two-thirds (69.0 percent) were also burglars. It might also be added here that 42.7 percent of these subjects used weapons during the commission of all or some of their crimes, the usual weapon being a handgun.

Strikingly, the incidence of arrest among these 239 male heroin users was extremely low. Of the 80,644 reported crimes, only .2 percent ($n=189$) resulted in arrest. More specifically, consider the following ratios of crimes committed to ensuing arrests:

Crimes against persons	293:1
Crimes against property	273:1
Drug sales	440:1
Forgery/counterfeiting	285:1

In sum, considering all crime categories, one arrest occurred for every 427 crimes committed, with the highest proportion of arrests following alcohol offenses, fraud, vandalism, and prostitutes' theft from clients; the lowest levels of arrest were in cases of extortion, loan sharking, prostitution and procuring, pickpocketing, con games, arson, and dealing in stolen goods.

The level of criminal involvement among the female heroin users was also high, but with a different pattern (see Table 5).

TABLE 5.—CRIMINAL ACTIVITY DURING PAST 12 MO, 117 ACTIVE FEMALE HEROIN USERS

Crime	Total offenses	Percentage of total offenses	Percentage of sample involved	Percentage of offenses resulting in arrest
Robbery	573	1.5	17.1	0.5(n=3)
Assault	26	<.1	7.7	11.5(n=3)
Burglary	185	.5	20.5	1.1(n=2)
Vehicle theft	5	<.1	1.7	
Theft from vehicle	182	.5	18.8	.5(n=1)
Shoplifting	5,171	13.8	70.1	.3(n=13)
Pickpocketing	162	.4	4.3	
Prostitute theft	1,345	3.6	51.3	
Other theft	182	.5	20.5	.5(n=1)
Forgery/counterfeiting	888	2.4	29.9	.3(n=3)
Con games	251	.7	17.1	
Stolen goods	1,006	2.7	36.8	<.1(n=1)
Prostitution	14,307	38.2	72.6	.3(n=37)
Procuring	1,153	3.1	23.1	
Drug sales	11,289	30.1	81.2	.2(n=23)
Arson	88	.2	3.4	
Vandalism	3	<.1	1.7	
Fraud	34	<.1	6.0	
Gambling	574	1.5	22.2	
Extortion	41	.1	4.3	
Loan sharking	1	<.1	.9	
Alcohol offenses	22	<.1	6.8	22.7(n=5)
All other	2	<.1	1.7	100.0(n=2)
Total	37,490	100.0	100.0	.3(n=97)
Mean number of offenses per subject	320			

Some 93.6 percent of the females reported the commission of crimes during the twelve *months* preceding the interview, with a median of 87.7 percent of the criminal activity engaged in to support a drug habit. The 117 female heroin users admitted responsibility for 37,490 crimes, with prostitution and drug sales accounting for more than two-thirds (68.3 percent) of the total. Like the *males*, the female group manifested considerable diversity in their offense behavior, with 81.2 percent admitting drug sales, 72.6 percent engaging in prostitution, 70.1 percent reporting shoplifting, and 51.3 percent indicating prostitute theft. Fewer females participated in crimes of violence, and, while many engaged in burglaries and *other types of theft*, such larceny was notably less frequent than among males. Females, however, tended to be arrested more frequently than males during this twelve-month study period, with a ratio of 1 arrest for every 387 crimes committed. The highest rates of arrest involved assaults and alcohol; most arrests were for prostitution and drug sales; no arrests resulted from 1,345 cases of prostitution theft; and the ratio of shoplifting crimes to arrests was 398:1 for the more than 5,000 cases.

Finally, fewer females used weapons during all or part of their offenses (18.8 percent), with the most common weapon being a knife rather than a gun.

DISCUSSION

These data suggest a number of considerations and implications relevant to the relationship between heroin use and crime, while at the same time indicating several areas for further research.

First, the data document a high incidence and diversity of criminal involvement among both male and female heroin users. The 356 persons studied here reported involvement in a total of 118,134 criminal offenses during a twelve-month period, most of these offenses committed for the purpose of supporting the economic needs of a drug-using career. Furthermore, while most of the criminal offenses were what are often referred to as victimless crimes, the 356 respondents were nevertheless responsible for some 27,464 instances of what the Federal Bureau of Investigation designates as index, or serious, crimes.[1] Numerous differences are apparent between males and females in this regard, with the males manifesting a greater involvement in predatory crime, especially violent predatory crime; however, the data also demonstrate that heroin users of both sexes manifest considerable participation in many different levels of criminal activity.

Second, it is evident in these data that arrest rates among heroin users are low. The 118,134 criminal events reported here resulted in a total *of only 286* arrests, or a ratio of 1 arrest for every 413 crimes committed; with respect to the more serious index crimes, there was a ratio of 1 arrest for every 292 crimes. This low level of arrest is also apparent in the overall arrest histories of the subjects studied. Among the males, whose careers in crime spanned a median of 12.8 years, the median number of arrests was 3.5. Similarly, the median career in crime among the female heroin users was 11.0 years, and the median number of arrests was only 2.6.

Third, the data described here provide some information pertinent to the question about drug use and crime: namely, is crime a pre- or post-drug-use phenomenon? What the data suggest is that the question phrased in these terms is an oversimplification of a very complex phenomenon. By examining the median ages of initiation into various stages of substance abuse and criminal careers, the complexity becomes evident. For example—

	Males	Females
First alcohol use	12.8	13.8
First alcohol intoxication	13.3	13.9
First criminal activity	15.1	15.9
First drug abuse	15.2	15.2
First marijuana use	15.5	15.4
First arrest	17.2	18.3
First barbiturate use	17.5	17.0
First heroin use	18.7	18.2
First continuous heroin use	19.2	18.4

Among the males, there seems to be a clear progression from alcohol to crime, to drug abuse, to arrest, and then to heroin use. But upon closer inspection, the pattern is not altogether clear. At one level, for example, criminal activity can be viewed as predating one's drug-using career, since the median point of the first crime is slightly below that of first drug abuse, and is considerably before the onset of heroin use. But, at the same time, if alcohol intoxication at a median age of 13.3 years were to be considered substance abuse, then crime is clearly a phenomenon that succeeds substance abuse. Among the females, the description is even more complex. In the population of female heroin users, criminal activity occurred after both alcohol and drug abuse and after marijuana use, but before involvement with the more debilitating barbiturates and heroin.

In summary, these preliminary data suggest that an alternative perspective for research on the link between drugs and crime may be in order. Although the findings here are descriptive of only one population, which could be unique, they suggest that the pursuit of some simple cause-and-effect relationship may be futile. It is clear that heroin users are involved extensively in crime, and that their involvement is largely for the purpose of supporting the desired level of drug intake. It is also clear that users' initiation into substance abuse and criminal activity occurs at a relatively early age. But there are several things that are not clear. Do substance abusers, for example, alter the nature, extent, and diversity of their criminal behaviors at the onset of marijuana use, at the onset of heroin use, or after their initial criminal justice processing? Do adolescent predatory criminals alter the nature and extent of their criminal involvement at various stages of drug abuse? Does drug abuse involve a shifting from primarily predatory crime to victimless crime? Does drug taking result in an increase or decrease in criminal activity? And finally, does a drug-taking career fix the criminal careers of adolescents who might otherwise shift into more law-abiding pursuits as they approach young adulthood? These questions can be answered only by turning away from existing notions about the drug/crime nexus, generating a more comprehensive data base, pinpointing the locations where drug use and crime are highest, and circumscribing total criminal involvement at all stages of drug-using and non-drug-using adolescent careers.

[1] The FBI index crimes include homicide, forcible rape, aggravated assault, robbery, burglary, larceny-theft, and motors vehicle theft.

THE CRIMINALITY OF HEROIN ADDICTS WHEN ADDICTED AND WHEN OFF OPIATES

(By J. C. Ball, L. Rosen, J. A. Flueck and D. N. Nurco)

[Tables appear at end of article]

ABSTRACT

This study of 243 male opiate addicts has two broad objectives: (1) to ascertain the frequency and types of offenses committed by addicts during an 11 year period, while at risk, or "on the street"; (2) to compare criminality during addiction periods with criminality during periods off regular opiates.

It was found that these 243 addicts committed more than 473,738 offenses during their years at risk. The extent of their criminality was measured by the number of Crime-Days *accumulated*. A *crime day* is a 24 hour period during which one or more crimes is committed (not including drug use or drug possession). The mean number of crime-days-per year at *risk per addict* was 178.

With respect to criminal careers, it was found that 156 of the addicts were primarily engaged in theft, 45 were drug dealers and 36 were involved in assorted other crimes. For each of these groups, the extent of their criminality was markedly affected by their addiction status. Their average crime-days per year at risk when addicted was 248.0; when off regular opiates, it was 40.8. Thus, there was a six-fold increase in their frequency of crime when addicted.

A stepwise regression analysis revealed that criminality was correlated with demographic variables, but the dominant influence upon the extent of their crime was the amount of time addicted. In conclusion, the research significance and policy implications of these findings are reviewed.

INTRODUCTION

Overview of the research problem

There is rather general agreement among criminologists that an increase in criminality commonly occurs following the onset of heroin addiction in the United States (Chein et al, 1964; O'Donnell, 1966 and 1969; Ball and Snarr, 1969; Nash, 1973; Weissman et al., 1974; McGlothlin et al., 1978). Despite this overall consensus however, the dynamics of the relationship between opiate addiction and crime continues to be a matter of controversy. Among the questions which remain unresolved, three seem especially crucial:

(1) What is the temporal sequence of events regarding the onset of heroin addiction and the commencement of criminal behavior? (2) What are the types and frequencies of crimes committed by heroin addicts? (3) What impact does post-onset periods of abstinence or subsequent periods of addiction have upon criminality?

Although answers to these questions will not solve the social problem of heroin addiction in the United States which currently involves 550,000 individuals (Federal Strategy, 1979), the answers could provide a means of unraveling one difficult aspect of the problem—that involving criminal behavior. An answer to the first of these three questions is derived from a critical review of pertinent scientific reports. Answers to the second and third questions are provided by an analysis of the present research findings.

The issue of sequence reviewed

The issue of the temporal sequence of drug abuse and criminal behavior has been a topic of scientific concern for over 50 years. The reason for this interest has been primarily etiological—to determine which of these factors was the determining (or causal) one.

Most of the early investigators found little criminality before the onset of opiate addiction (Klob, 1925; Terry and Pellens, 1928; Pescor, 1943). Later studies, however, have shown a high probability of criminality preceding heroin addiction (Robins and Murphy, 1967; Jacoby et al., 1973; Chambers, 1974). Thus, Jacoby reports that 71 percent of heroin users in Philadelphia had a delinquency record prior to onset of their opiate use compared to 35 percent of all boys in the same city-wide age cohort who also had such records.

This difference in the sequence of events between the early and later studies suggests that there is no invariant relationship between heroin addiction and crime. Instead, it seems that the relationship is contingent upon the particular historical period and population of heroin addicts selected. Thus, if heroin is being introduced into a non-criminal or low-criminal population (e.g., medical professionals or middle-class adults) it would be highly unlikely to find criminality preceding heroin use. Conversely, higher levels of preexisting criminality among heroin addicts would be expected within a population with a high endemic crime rate (e.g., youthful lower class males in metropolitan slums). Support for this demographic and historical interpretation of the sequence issue is found in numerous studies of addict populations in which the sequence of onset of opiate use and the commencement of criminality differ. (See Ball and Chambers, 1970.)

It seems reasonable to conclude, therefore, that the issue of the sequence of unique events (first heroin use or a first act of delinquency) may be less significant than determining the continuing influences which sustain criminality and opiate addiction over a period of years or decades. This contention is supported by the fact that an initial onset experience of substance use (opiates, marihuana, alcohol, tobacco, etc.) often does not lead to continued use and dependence and, furthermore, that most citizens engage in one or more acts of delinquency during adolescence without becoming enmeshed in a criminal lifestyle.

Further conceptual impediments to crime-drug research

Before turning to consider the frequency and type of crimes committed by addicts and the impact of heroin addiction upon these crime rates, it is pertinent to comment upon several conceptual and methodological problems which confront researchers in this area.

Although there has been a notable increase in criminological research pertaining to heroin addiction in recent years which has produced a significant knowledge base, there still are unresolved conceptual problems which tend to obscure the fundamental scientific issues and, therefore, hamper the formulation of testable hypotheses and relevant research on this topic. Among the more pressing conceptual problems, four seem most apparent. These are (1) inappropriate use of a unitary factor causal model, (2) failure to distinguish between onset of deviance and its continuance as separate issues, (3) lack of cross-cultural and historical perspective, and (4) general neglect of abstinence periods in studying this relationship. Each of these conceptual issues will be discussed.

A pervasive conceptual problem which has seriously impeded the advancement of research with regard to the crime-drug relationship is use of a unitary causal model which posits that there is a single causal factor which will explain this relationship. Commonly, the researcher holds that heroin use "leads to" crime; or that crime "leads to" heroin use; or that both drug addiction and crime are caused by a single third factor. The belief that there is a single caused factor which will explain both crime and drug abuse appears to be a misapplication of the infectious disease model which seeks to identify a specific causal agent. But the concept of a single invariant causal agent is an inappropriate, and hence, fallacious, explanation for most human behavior. It is no longer meaningful to talk of the cause of crime, or the cause of drug use. There are various reasons why individuals engage in crime or become drug addicts.

A second conceptual problem involves the failure to distinguish between the onset of heroin use and the reasons for continuation of use over the years. These two phenomena are quite different. Thus the circumstances and influences which contributed to first use of heroin are quite different from those which support long-term addition to heroin. And so it is with criminal behavior: a first illegal act is quite different from a criminal career.

A third conceptual problem has far-reaching implications, although it involves rather straightforward findings from cross-cultural and historical research. This involves the fact that crime and opiate use exist independently of one another. Consequently, it is apparent that heroin use does not always promote criminal behavior, nor crime always promote drug use. Rather, a cross-cultural and historical perspective substantiates the proposition that there may, or may not be, a relationship between opiate use and crime within a specified population and culture. (Ball, 1977).

A last conceptual point is that periods of abstinence from opiate addiction have been largely ignored in research, although the contrast between periods of addiction and abstinence (or lesser use) with respect to criminal behavior could significantly further our knowledge of this relationship. This omission may be due to a lingering notion that heroin addicts are seldom if ever off drugs except when incarcerated (which is untrue); or it may be that this research neglect is due to the difficulty of obtaining detailed data pertaining to periods of abstinence and addiction.

By way of recapitulation, it may be said that various conceptual problems have tended to hinder the formulation of specific research questions which could be investigated and resolved. The emphasis upon searching for universal relationships and developing grandiose casual theories has impended middle-range theories based upon verifiable empirical generalizations.

Measurement issues in crime-drug research

By and large, the most striking methodological weakness in contemporary research pertaining to the crime-heroin relationship is the lack of adequate measures of criminality. The measurement problems are easy to identify, but difficult to resolve.

Two measurement issues are of particular significance in the present context. First, it has been recognized that official records of crime are an inadequate measure of actual criminal behavior within most offender populations. This tends to be especially the case among persistent offenders. Thus, recent studies have reported that less than one percent of property offenses committed by drug abusers result in arrest. (Inciardi and Chambers, 1972; McGlothlin et al., 1978). In addition to grossly underestimating the amount of crimes committed by opiate addicts, official records may also fail to provide a representative sample of the types of crimes committed.

Secondly, there is need for a measure of criminality which will enable analysis of actual crime-rates over an offender's career or lifetime. Thus, we would like to be able to measure criminal behavior on a yearly basis in order to surmount the middle-class bias of regarding crime as a unique or infrequent event. If addicts are committing hundreds of crimes a year per subject (as is the case in this study) it is not only inaccurate to depict this as being reflected by one or two arrests, but it is a gross distortion of a social reality. The research need, then, is to obtain a valid and meaningful measure of criminal behavior which will facilitate the computation of yearly rates.

In stating that there are special measurement needs in studying populations who are heavily involved in criminal behavior, it is pertinent to note that most criminological resesarch and most studies pertaining to drug users are concerned with a few officially recorded crimes or a few minor acts of delinquency. As a consequence of this dominant focus upon populations with a low frequency of criminality, measurement problems encountered when studying populations with a high frequency of criminal events (e.g., 200 or more crimes per year) have been neglected. For example, high monthly or yearly offense rates may prove difficult to interpret and use in comparative analysis because of the confounding effect of these few high values upon sample statistics. Thus, if a few individuals commit a thousand or more offenses per year, this fact can easily distort other sample statistics unless appropriate measures are employed.

Indeed, it was precisely this problem which prompted the formulation of our crime-day measure, which will be discussed below.

Statement and development of the research problem

As noted previously, this study was planned to provide answers to two rather specific research questions: What are the types and frequencies of crimes committed by heroin addicts? What impact does post-onset periods of abstinence or subsequent periods of addiction have upon criminality?

In pursuing answers to these seemingly straight-forward research questions, we soon found ourselves involved in reviewing hundreds of interview schedules, devising new coding procedures and otherwise enmeshed in the complexities of criminological data analysis. Among the problems which we encounted were the following:

1. How should we handle multiple offenses committed on the same day? (If we count each act of theft—as in department store "boosting"—as a separate event, the large number obtained will not provide a meaningful basis for comparison).

2. How can we, or should we, differentiate among various types of felony offenses? (That is, given the extent of criminality in this sample, how can we classify their offenses in a meaningful way?)

3. How can drug offenses, "drug related"

offenses and other offenses be differentiated? (At the onset, it was decided to delete drug use and possession offenses, but what about drug sales and property offenses? How should these be analyzed?)

4. What time period should be used in computing crime rates? (Monthly, yearly, or for their addiction career?)

5. Is it feasible to trace crime careers in terms of the predominant type of offense committed? (How can the addicts be classified according to their criminal way of life?)

6. How can periods of addiction and periods of regular opiate use be analyzed with respect to crime rates? (With no accepted procedure for computing rates and with the difficulty of combining, or otherwise ordering, addiction and abstinence periods, how could meaningful comparisons be effected?)

The above is a simplified and organized list of some of the measurement problems which confronted us at the beginning of the data analysis. In retrospect, it is evident that the difficulties were primarily due to a single methodological problem. An appropriate and efficacious measure of criminality was not available. What was needed was a measure that would: provide a feasible means of explaining crime in this population, be scientifically and statistically valid, and yet be reasonably simple to use and understand.

A new measure of criminal behavior: Crime-days per year at risk

In the present paper, a new measure of criminal behavior is described and employed in an on-going research project. The new measure has been termed Crime-Days Per Year at Risk. A crime-day is a 24-hour period in which an individual commits one or more crimes. The number of crime-days per year at risk refers to the number of days per year that an individual has committed crimes from 0 to 365.

This new measure, Crime-Days Per Year at Risk, is found to have unique analytical power as it permits the calculation of uniform crime rates by years at risk and it is not confounded by multiple crimes committed on a given day. Furthermore, the term Crime-Days Per Year at Risk appears to be an effective procedure for explaining and understanding the extent of serious criminal behavior because it relates the number of crimes committed by individuals to a common frame of reference—times per year. The discovery of the average crime-days per year concept was made by the senior author while analyzing detailed life history data pertaining to heroin addicts as part of a follow-up study in Baltimore.

V. Definition of terms:

Crime-Day.—A crime-day is defined as a 24-hour period during which one or more crimes is committed by a given individual. Each day of the year, then, is either a crime-day or a non-crime day.

Heroin Addiction.—This term refers to the daily use of opiates. (Daily use or regular use, is defined as use during at least four days per week for a month, or longer; most were heroin users).

Average crime-days per year.—This measure is defined as the average number of Crime-Days Per Year at Risk for a given individual. The range is from 0 to 365. Thus, an individual with 1,489 crime-days during a seven year risk period has an average Crime-Days Per Year at Risk of 213. (Actual computation is by days at risk and number of crime-days).

Years at risk.—Years at Risk is the number of years an individual is "on the street" or not incarcerated. It is calculated on a cumulative basis by subtracting jail, prison, and hospital time from the years since onset of regular opiate use.

Principal type of crime.—This is the predominate type of crime engaged in by a given individual during his years at risk, as theft (boosting, burglary, etc.), con games, robbery, gambling, drug sales, etc. This principal type of criminal behavior is the most common offense committed from an actuarial viewpoint. It answers the question, what kind of crime does he usually commit? The crimes reported by our sample reflect a broad range of criminal behavior and include: larceny (pick-pocketing, shoplifting, unauthorized use, burglary), robbery, fencing, assault, con games, pimping, soliciting, gambling, rape, abortions, forging, drug dealing, murder, and loan sharking. Mere possession or use of drugs is not classified as a crime in this analysis.

Criminal career.—This is the criminal behavior pattern which an individual has followed while at risk. The two main elements in determining the crime pattern are (a) type of crime and (b) frequency of crime. Examples of crime patterns are: daily theft, daily con games, weekly robbery, weekly forgery, infrequent assault, and so forth. In each case, the crime pattern, or career, is the most common, or usual, offense committed during the subject's years at risk and the frequency of commission. Thus, a pattern of daily theft during a four-year period indicates that the individual had as his common offense theft of property and that this was carried on most of the time he was at risk. Since the crime pattern is derived for each person from his average-crime-days per year and the principal type of crime committed, the actual number and type of crimes is known in each case.

In order to obtain answers to the criminological questions advanced, the study was organized according to the following procedures: (1) A sample of 243 male opiate addicts was selected for study, (2) Periods of addiction and periods of abstinence from opiate dependence were enumerated. (3) The number of crime-days per year at risk was determined for the sample. (4) The addicts were classified by principal type of criminal career pursued from onset of regular opiate use to interview. (5) The extent of crimes committed were analyzed by criminal career types controlled for addiction and abstinence periods. (6) a correlation analysis of addiction, crime and demographic variables was undertaken. (7) a stepwise regression of addiction and abstinence periods was undertaken in order to determine the relationship of selected crime and demographic variables to each of these drug use statutes. In the remainder of the paper, these procedures will be described and the relevant research findings presented.

The sample and interview schedule

This paper is based on interview data obtained from 243 Baltimore opiate addicts (most were heroin addicts). The 243 male addicts were a random sample selected from a chronologically stratified list of 4,069 known opiate users arrested (or identified) by the Baltimore Police Department between 1952 and 1971. The sample was unselected for criminality, but stratified by race and chronological period. Of the 243 subjects, 109 were white and 134 were black. Analysis of race and cohort differences has been undertaken elsewhere (Nurco and DuPont, 1977).

The selection of the final sample of 243 was accomplished as follows. The initial sample drawn from the police files consisted of 349 individuals, but 57 of these had died by the time of followup interview, 2 were in mental hospitals (for psychosis), 6 were uniocated and 17 refused to participate in the study. Thus, 92 percent of the sample who were alive and not in mental institutions were interviewed (i.e., 267 of 290 subjects).

Of the 267 addicts who were interviewed, 14 claimed never to had been regular users of opiates, 3 used opiates regularly for only one or two months and the onset of one preceded everyone in the sample by 22 years; these 18 were excluded. In addition, a careful review of the remaining 249 cases revealed that 6 interviews had significant discrepancies between their self-reports and FBI records; these 6 were eliminated. (These six claimed no criminal behavior, but their arrest record listed two or more non-drug offenses). The remaining sample consisted of 243 cases. The sample procedure and characteristics of the base population are described more fully elsewhere (Nurco et al., 1975).

Although comprehensive penal, hospital and other institutional data was collected with respect to the addict sample, the main source of data for the present analysis was obtained through personal interviews. Each of the 243 addicts was interviewed between July 1973 and July 1974 by specially trained interviewers who were familiar with the Baltimore addict subculture. The interview lasted some three hours and the questions were focused upon six topics: drug use, criminal behavior, work, living arrangements, drug selling and sources of income.

The interview schedule consisted of six parts: (1) Life-time prevalence of drug use by specific drugs of abuse (7 pages, completion time about 30 minutes); (2) History of opiate use by addicted and abstinent periods during risk years (3 pages, 30 minutes to complete); (3) Preaddiction criminality and circumstances of onset of opiate use (7 pages; 30 minutes); (4) Circumstances of first regular use of opiates (i.e., daily use for a month or longer) and each subsequent addiction period. This part includes information on criminality for each period of regular opiate use or abstinence (10 minutes for each addiction period; 7 pages each); (5) Marital history, parental background, juvenile delinquency, military service, treatment history, incarceration history, criminal history (16 pages; 60 minutes to complete); (6) Interviewer's rating of respondent's attitude, appearance and overt responsiveness (1 page; 5 minutes).

The validity of the interview data has been the subject of a separate study (Bonito et al., 1976). The findings of this study substantiate the conclusions from prior research concerning the validity of interview data obtained from opiate addicts; namely that valid data can be obtained if specially trained interviewers who are familiar with the local addict subculture are employed.

III. The research findings—addiction and abstinence periods for 243 males:

The mean age of the 243 males at the time of interview was 35.9 years and 93 percent of the sample was between 25 and 49 years of age. Since onset of opiate addiction usually had occurred when the subjects were between 15 and 19 years, most of the sample had a post-onset career of 10 or more years (198 had 10 or more years, 37 had 5–9, and 8 had 2–4 years).

Since a major focus of the lengthy interview was to obtain detailed chronological data pertaining to addiction status from onset of regular opiate use to time of interview, each subject was asked to describe in detail his addiction, abstinent, and incarceration periods. For the entire sample, there were 2,340 time periods, 1,1022 were addiction periods, 488 were abstinent periods, 700 were jail or prison time periods, 52 were hospitalization periods and 78 periods were unclassified because of insufficient data. (These few unknown periods were omitted from further analysis). In the present paper, attention is directed toward the addiction and abstinent periods, as this was the time during which the subjects were at risk.

All subjects had one or more addiction periods. The average length of an addiction period was found to be two years, although longer period were common. Each subject was asked about his daily and weekly use of specific drugs during each period (dosage, multi-

ple use, times used per day or week). In this manner, each subject's years, months and days at risk was classified as addicted to or abstinent from opiates.

The total amount of time that this Baltimore male sample spent addicted to opiate drugs since onset of regular opiate use was 61.6 percent of their risk years; they were off regular opiates 38.4 percent of their risk years. Since their average years at risk was 11.3, they were addicted to opiates almost two-thirds of the time, and abstinent somewhat over a third of the time (Figure 1). Two further points are pertinent about their abstinence periods. First, with regard to the abstinence from regular opiate use classification. This status included periods of occasional use of opiates as well as periods of frequent use of non-opiate drugs. Second, it is significant that 85 percent of the sample had such abstinence periods.

Lifetime criminality since onset of opiate addiction

Although periods of addiction or abstinence during the years at risk provided the chronological frame of reference for the interview, additional detailed data was obtained for each period concerning criminal behavior, employment, income, family life and other variables. With respect to criminality, each subject was asked about the number and type of crimes he committed on a weekly and daily basis for each addiction or abstinent period. These responses provided the basis for determining the number of crime-days, the principal type of crime and crime and criminal career pattern for each subject.

The total number of crime-days during the risk years for the 243 addicts is tabulated in Table 1. The range in crime-days within the sample was from 0 to 9,450. That is, from no crimes committed by six addicts to 9,450 crime-days accumulated by one addict during his risk years.

The total number of crime-days amassed by these 243 addicts during their years at risk was 473,738. This total is an underenumeration of the total number of crimes committed as multiple crimes during a crime-day were common. It is also pertinent to note that most of the crimes reported were for theft and that drug use or possession was not classified as a crime.

The mean number of crime-days per addict during their years at risk was 1,998.9. Thus, the majority of these addicts were deeply enmeshed in a criminal way of life. There were, however, important differences in their patterns of criminal behavior as well as their frequency of committing crimes. In order to control for years at risk, crime-days were computed for each person by years at risk (Table 2). The mean number of crime-Days per year at risk for the sample was 178.5. Thus, the total amount of time that these Baltimore addicts spent engaged in daily criminal behavior since their onset of addiction was almost half of their risk years. To be exact, they were committing crimes on a daily basis during 47.7 percent of their years at risk (Figure 2).

Criminal careers of the 243 addicts

Each of the 243 addicts were classified as to the common criminal career which he had followed since onset of regular opiate use. These criminal career types were determined on the basis of the principal, or most common, type of crime committed, and secondly, on the frequency of commission—whether daily, weekly or less often. Six of the 243 addicts had committed no crimes during their risk period.

It was found that the 237 addicts who had committed crimes could be classified into nine types of criminal careers. These nine were: daily theft, daily drug sales, other daily crime; weekly theft, weekly drug sales, weekly other crimes; infrequent theft, infrequent sales and infrequent other crimes (Table 5). Some two-thirds of the 237 addicts had theft as their principal type of crime. Of these 156 who were career thieves, 41 engaged in daily theft during their year at risk, 58 engaged in weekly theft and 57 in infrequent theft.

The selling of drugs was the second most favored type of crime committed by these addicts; 45 were principally engaged in selling drugs, or "dealing". Of the 45 dealers, 13 pursued this crime on a daily basis, 18 on a weekly basis and 14 on an infrequent basis.

The remainder of the sample were engaged in committing other types of crimes on a daily, weekly or infrequent basis. Of these 36, only 7 were engaged in daily crime, 7 in weekly crime and 22 in infrequent crimes. Confidence games, forgery, gambling and procuring (pimping) were the principal types of crime committed by these 36 addicts.

The classification of the sample into nine criminal career types somewhat obscures the fact that many addicts engaged in more than one type of crime during their years at risk. This situation is especially notable with regard to the 61 addicts who were daily criminals. Thus, 55 of the 61 had engaged in theft during their years at risk and 43 had engaged in some dealing, although only 13 had this as their principal daily criminal activity. In addition to theft and dealing—the two most common types of crime—33 of the 61 had engaged in other crimes, such as forgery, gambling, confidence games, robbery and pimping. The complete list of all crimes reported by these daily criminals during their years on the street is: theft (this includes shoplifting; "cracking shorts", burglary and other forms of stealing), dealing, forgery, gambling, confidence games (flimflam, etc.), pimping, assault, mugging, robbery, armed robbery, and abortionist. Lastly, although most of the 61 criminals engaged in more than one type of crime during their years on the street, there still was a marked tendency to focus upon one main, or principal type of crime—(especially theft or dealing). Furthermore, 11 of these 61 males confined themselves exclusively to one type of crime during their years at risk (8 only committed theft, one only sold drugs, one was a confidence man and one a gambler).

The impact of addiction upon criminal careers

The extent of criminality among all nine career types was affected by their addiction status. Thus, there was an overall sixfold increase in the number of crime-days per year at risk during addiction as contrasted with the abstinent periods (Table 5). Rather surprisingly, the proportionate increase in crime-days per year at risk when addicted vs. when abstinent was most marked among the criminals who engage in weekly or monthly offenses. Thus, for 5 of these 6 career types (weekly theft, weekly dealing and the three infrequent types) the extent of criminality increased more than ten times the non-addicted rate. The greatest increase was for the 22 subjects who committed other crimes on a monthly basis—from 2.3 crime-days per year to 108.2 crime days per year.

Although the extent of criminality within this addict sample was notably increased when the subjects were addicted to opiate drugs, the non-addicted crime rate was still quite high. As might be expected, the highest crime rates when not addicted were found among the three criminal career types who had the highest crime rate when addicted (daily theft, daily sales and daily other crimes). In these three career types, the addicts committed crimes from one to three days per week when not addicted (for these three groups, the rates per year at risk were 109.7, 88.3 and 151.0). In considering the rates of criminality for the nine career types when abstinent from opiates, it seems significant that these nine rates vary more (from 2.3 to 151.0) than do the rates when these same subjects are addicted. In a sense then, one effect of opiate addiction is to raise the number of crimes committed to a threshold, or support, level, and this occurs for all nine career types. Thus, when addicted, 7 of the 9 career types commit more than 260 crimes per year and none of the nine career groups fall below 100 crime-days per year at risk.

Correlation of addiction, crime and demographic variables

In order to investigate the relationship of specific addiction, crime and demographic vairables, a correlation analysis of ten variables was undertaken. These ten were: (1) Total number of crime-days accumulated during years at risk (Total CD); (2) Total number of crime-days accumulated while addicted during years at risk (CD–H); (3) Total number of crime-days accumulated while not addicted during years at risk (CD-Off); (4) Total number of days addicted during years at risk (H-days); (5) Total number of days not addicted durng years at risk (off-days); (6) Total number of officially recorded arrests during years at risk (Arrests); (7) Crime committed after age 17, but prior to onset of addiction; by self-report. Coded as a dichotomy: 1. Yes, 2. No. (Prior Crime); (8) Race: 1. White, 2. Black; (9) Age at onset of opiate addiction. (Onset Age); and (10) Age at time of interview (Age at interview, or Age).

The correlation matrix of Table 4 provides an initial delineation of the relationship among these three sets of variables (i.e., addiction, crime and demographic). The first column, total crime-days (variable 1), indicates the overall relationship of criminality to addiction and other variables, but the interpretation of several of these Column 1 correlations is ambiguous due to the distinct effect of addiction vs. non-addiction status. This uniqueness of the two addiction statuses is evident in a comparison of column 2 with column 3. Thus, total crime-days when addicted (variable 2) is significantly correlated with all seven variables: H-days, off-days, arrests, prior crime, race, onset age and age at interview, but not significantly correlated with total crime-days-off (variable 3). Furthermore, total crime-days-off is not significantly correlated with any of these same seven variables. (4 through 10) Also underscoring the distinctiveness of the two periods is the absence of correlation between them (i.e., R of minus 0056 between variables 2 and 3) which indicate that the frequency of crime committed during addiction and off-periods are independent of one another. Thus, the amount of crime committed during addiction periods does not predict the amount of crime committed while off opiates; consequently, a "heroin day" is a ery different kind of day from an "off-day" insofar as crime is concerned.

With respect to criminal history and demographic variables, these are both correlated with total crime-days and crime days-H, but as noted not with crime-days off. Specifically, the total number of arrests since onset of addiction is positively correlated with variables 1 and 2. The correlation of arrests with crime-days-H is (.3073). Variable 7, prior crime, is also positively associated with CD–H, but this measure of early criminality poses difficulties with respect to interpretation because it is affected by early onset and prior juvenile delinquency; nonetheless, it is included in the present analysis as it does measure prior criminality to some extent.

Race (black) is positively correlated with crime-days-H, but again, not with crime-days off. Age at onset of opiate addiction (Variable 9, Table 4) is negatively correlated with crime-days-H and crime-days-off, although the latter correlation (—.1221) is not significant. The finding that early age at onset of addiction is correlated with a higher

frequency of later criminality is a consistent finding of this study. The moderate positive correlation of age at interview with crime-days-H (.2130) indicates that age (and time at risk) have some relationship to crime-days, but that this issue requires further analysis.

In considering time at risk, or "street" time, it might appear that the high positive correlation between H-days and crime-days-H (.7914) is to be expected because both of these measures are affected by the amount of time at risk. But considerably more is operating here than time at risk. For if time at risk were the principal influence, then the two correlations (off-days and CD-off: and H-days with CD-H) would be about equal in value. But the marked difference between these two correlations (.1567 vs. .7914) indicates that other influences are operating during the addiction periods as contrasted with the off periods. Furthermore, a partial correlational analysis controlling for age at interview revealed that the relationship between crime and number of days for both the on and off periods was similar to the zero-order values. Thus, for the on periods, a partial value of .7907 was obtained (compared with a zero order value of .7914) and, for the off periods, a partial value of .1817 (compared with .1567). These results indicate that age and time at risk are not the principal influences which determine the number of crime-days accumulated by these 237 addicts.

Stepwise regression analysis of addiction and abstinence periods

Thus far, it has been found that: (1) The frequency of crime is strongly related to the amount of addiction time, and (2) That the addiction and non-addiction (or abstinence) periods are quite distinct experiential periods which require separate analysis. In order to investigate these two major findings with greater precision and analytic power, a stepwise regression analysis of the addiction and abstinence period was undertaken for the 237 male addicts. In this analysis, relevant variables from the correlation matrix are employed.

The stepwise regression analysis of crime-days accumulated while these 237 addicts were addicted yields results which are quite striking. (Table 5). Thus, there is strong positive correlation between the number of days addicted and the number of crime-days (.7914). This single variable (H-days) accounts for 63 percent of the variance in criminality during the addiction periods. Two of the remaining variables account for a small additional proportion of the variance: these are age at interview and number of arrests, both positively correlated with crime-days-H.

The stepwise regression analysis of crime-days accumulated during off-periods reveals results which are quite different from those of the addiction periods. With respect to criminality during the off-periods (as measured by crime-days off), only two of the seven variables are significantly correlated (Table 5). The first of these off-days, is only weakly correlated with crime-days-off (+.1567). The second variable to enter, age at onset, is negatively correlated with CD-off indicating the consistent relationship between early age of addiction onset and criminality previously noted. The remaining five variables are not significantly correlated with crime-days while off. Of special interest is the lack of correlation between crime-days-off and H-days. Thus, the amount of crime committed by these heroin addicts while they were not addicted is independent of the amount of their addiction time. This analysis of criminality while not addicted to heroin reveals then, only small variance accounted for by the variables studied. In this sense, the findings are similar to those of most criminological research which shows modest correlations between crime and independent variables.

Stepwise regression analysis of criminality for the three career groups

Inasmuch as the frequency of crime was found to be related to the criminal careers of these 237 addicts, it was deemed necessary to undertake a separate stepwise regression analysis for each of the three major offender groups: those primarily engaged in theft of property, those who were drug sellers and those engaged in other types of crimes (Table 6-8).

Perusal of the three tables reveals that the number of days that the subjects were addicted is the single most important influence upon their criminality during the addiction periods. In this regard, the strongest effect was for the dealers and the weakest effect for the other crimes group. The remaining variables added little to the explained variance for the theft and dealer groups, but were more important for the other crime group. The total variance explained in all three groups was high, (i.e., 67.7%, 73.7%, and 61.4%).

The three offender groups were also quite similar with respect to criminality during the off-periods, in that substantially less of the variances was accounted for by the variables studied. Thus, for the 156 offenders engaged in theft, the 45 dealers and the 36 involved in other crimes, only from 10 to 25 percent of the variance was accounted for during the off-periods.

To recapitulate, these findings suggest that the theft group and the dealers are fairly similar in that their criminality is primarily affected by their drug addiction. During the abstinence period, however, their frequency of crime is not highly explicable by the set of variables investigated in this study. But when daily heroin use takes hold, they turn to crime (by theft or dealing) to acquire sufficient resources to support their daily habit.

The "other" group emerges as a somewhat unique group. Although the impact of daily heroin use is strong, it does not seem to have the same overwhelming effect as it does with the other two groups. Consequently, these 36 individuals have a frequency of criminality that is somewhat more predictable during the non-addiction periods, as indicated by the relatively high R of .5034. While addiction seems to be a factor that definitely increases their crime, at the same time, other factors continue to be of consequence in both the addiction and abstinence periods.

Review and interpretation of the research findings

In reviewing the research findings of this study, attention will first be directed toward the significance of addiction and non-addiction periods. Then, the frequency, magnitude and persistence of offenses committed by these 243 addicts will be considered along with the types of crimes committed during their years at risk. Next, the correlation and stepwise regression analysis will be reviewed. This will be followed by an appraisal of the new measure of criminality utilized in this research—crime days per year at risk. Lastly, the broader implications of this study with respect to the control of crime committed by opiate addicts in the United States will be addressed.

It was found that these 243 addicts spent two-thirds of their time addicted to opiates and one-third not addicted. The time under study was their years at risk, or "street" time, and this averaged 11 years per addict from onset of addiction to time of interview. The fact that addiction was not a continuous state of drug dependency seemed significant. For it indicated that there were considerable periods during which changes in the addict's lifestyle might occur, and in fact, it was found that these periods of abstention (or lesser use) did have important consequences. In particular, it was found that criminality decreased markedly during the months or years that these addicts were not dependent upon heroin and other opiates. The decrease was striking—an 84 percent decline in the crime rate.

One of the major findings of this study was that heroin addicts commit a staggering amount of crime and that this continues fairly much on a daily basis for years and decades. Before turning to an analysis of differences in crime-rates by addiction status and other factors, it is meaningful to note the overall amount of crime which these 237 males have committed.

The research findings presented in Table 1 show that the average addict has committed one or more crimes during some 2,000 days. Taken together, these 237 male opiate addicts have been responsible for committing more than 500,000 crimes during an eleven year risk period. The exact figure is 473,738 crime-days, but this does not include multiple offenses committed on a given day, so the figure of 500,000 crimes is an underestimate. In this regard, it should be noted that theft was the principal type of crime committed and that drug use or possession were not themselves, classified as crimes.

This high frequency of criminality among opiate addicts is similar to that which has been reported by other investigators. Thus, Inciardi and Chambers (1972: 59) found that 26 addicts on the street were responsible on a daily basis for 22 major crimes." In a recent larger study, Inciardi found that 239 active male heroin users committed 80,644 offenses during a 12-month period (Inciardi, 1979). These latter results from addicts in Miami are remarkably similar to the present findings from Baltimore, both with respect to frequency and types of crime committed.

In the present study, it was found that the addicts could conveniently be classified into three major offender types—theft, drug sales and other crimes—on the basis of the crimes which they usually engaged in during their years at risk. This classification proved to be feasible after the concept and measure of crime-days was developed and it was found that criminal careers for most of the addicts were relatively stable. Thus, 156 addicts were found to be primarily engaged in theft, 45 in drug sales and 36 in other types of crime.

The measure of average crime-days per year at risk was introduced and employed to determine the frequency of offenses per year for each of the 237 addicts during all of their years at risk. It was found that the mean number of crime-days per year for the 237 addicts was 178.5. But, many addicts had more, or fewer, crime-days for each year at risk. Indeed, the distribution presented in Table 2 indicates that 9.5 percent of the addicts were engaged in crime virtually every day of their lives since they began regular opiate use. Conversely, there were 6 addicts who reported that they had not been engaged in crime at all during their years at risk. But most of the addicts were consistently engaged in a rather high level of crime during their years at risk; two thirds had from 100 to 365 crime-days per year for all of their years at risk.

A second major finding of the study was that addiction status had a marked influence upon criminality among these males. Thus, it was found that the number of offenses increased sixfold when these subjects were addicted. And significantly, this increase occurred for all nine offender types (Table 3). Thus, when abstinent, the average crime-days per year varied from 2.3 to 151.0, with an average of 40.8. By contrast, when addicted the rate was always over 100 crime-days per year and commonly over 250 crime-days per year at risk.

These research findings pertaining to the impact of addiction upon criminality were surprising and unexpected. Thus, we did not expect this marked increase, given the known involvement of this population in crime. Or, conversely, one might say that we were unprepared for the decrease which occurred when addiction ceased.

These findings concerning markedly different crime-rates when addicted and when off regular opiates led to a correlational analysis of these data. In this analysis, it was observed that the amount of crime committed during addiction periods was largely a function of opiate use, specifically of the time spent addicted. But unexpectedly, it was also found that the amount of crime committed when addicted was unrelated to that committed when off opiates. Thus, it may be held that this analysis provides an explanation for high crime rates during addiction, but provides a much less adequate account of criminality during the non-addiction periods. Although comparatively infrequent, criminality during these off periods deserves further investigation.

The stepwise regression analysis revealed that the impact of addiction upon criminality is pervasive and long-lasting. Thus, addiction was the principal force which increased criminality, regardless of the type of crime pursued. And this relationship between opiate addiction and criminality was not a transitory phenomenon, but an enduring relationship which obtained during an 11 year risk period.

Before turning to discuss the implications of this study, it is pertinent to comment upon the usefulness of the crime-days measure. In this study of subjects with an extensive history of criminality (which involved the computation of offense rates over a decade and more), the introduction of crime-days and crime-days per year at risk was exceedingly efficacious. Indeed, it seems reasonable to conclude that this study could hardly have been completed without the use of a crime-days measure (or a similar measure). For it was found that this measure—crime-days per year at risk—made it possible to compute meaningful and valid rates. It was not only that the rates were appropriate for the data on hand, but the concept of a crime-day proved to have a meaning which facilitated analysis and interpretation of the complex criminal history material.

Extensive criminality among addicts—Implications

The findings of this study concerning the extensive criminality of contemporary opiate addicts in the United States supports similar findings from other research. It is now evident that addicts are responsible for committing an inordinate amount of crime, that many of these offenses are serious in nature and that their criminality is rather firmly enmeshed in their lifestyle and therefore, that it is persistent and recurring.

But, this study adds one new ingredient to the picture. For our research findings indicate that it is opiate use itself which is the principal cause of high crime-rates among addicts. Once addiction ceases, crime rates drop markedly. And this notable decrease in criminality (an overall 84 percent decline) occurs for all types of offenders throughout the risk years. It is apparent, then, that a major means of reducing the amount of crime committed by opiate addicts is within sight. If we can control addiction, it is evident that we will reduce criminality appreciably.

But how can we impact opiate addiction? Three lines of attack come to mind. First, it is imperative that programmatic and research priorities be established which will further this specific objective—to impact addiction among persistent offender groups. These two aspects—programs and related research—must be a core component of any major national effort. For research without implementation can hardly be effective. And action programs not based upon relevant scientific knowledge are doomed to failure. Indeed, they cannot succeed for logical reasons, as only research can establish success or failure. Therefore, a first priority is to recognize that a major coordinated effort is required which will focus upon this single task.

Second, three or four well designed experimental programs need to be established to reach or impact specific offender populations. These experimental programs should make use of relevant knowledge concerning ongoing programs—such as TASC, methadone maintenance, family therapy and intensive probation efforts—yet be based upon new concepts and new research findings. In this last regard, it is imperative that these new programs be targeted to reach a specific offender population (as contrasted with programs which attempt to serve everyone without regard to need or likelihood of success), and employ means which have either a demonstrated association with the reduction of addiction or a well developed rationale for effecting this objective.

Finally, it may not be taken amiss if it be suggested that it is time to get on with the task at hand, and not be sidetracked by irrelevant ideological, scholastic or methodological arguments. Thus, while it is true that drug abuse may be difficult to define, that alcohol abuse is also a major social problem, that penalties for marihuana use are inconsistent, and that, in fact, there are many unresolved problems and difficulties in conducting research (especially if one seeks perfection and closure). Still, it is also true that existing knowledge and methodology is sufficient to address the problem at hand. We know that criminality is rampant among heroin addicts. We know that addiction markedly increases this criminality. And, we know that addiction can be impacted through treatment and control measures.

REFERENCES

Ball, J. C. (1977). "International Survey in 25 Nations." *Addictive Diseases*, 3 (1), issue editor.

Ball, J. C., and Chambers, C. D. (1970). The epidemiology of opiate addiction in the United States, Springfield, Illinois: Charles C. Thomas.

Ball, J. C., and Snarr, R. W. (1969). A test of the maturation hypothesis with respect to opiate addiction. *Bulletin on Narcotics*, 21 (4), 9–13.

Bonito, A. J., Nurco, D. N., and Shaffer, J. W. (1976). The veridicality of addicts' self-reports in social research *International Journal of the Addictions*, 11 (5), 719–724.

Chambers, C. D. (1974). Narcotic Addiction and Crime: an empirical overview. Chapter 5 in J. A. Inciardi and C. D. Chambers (eds.), Drugs and the Criminal Justice System. Beverly Hills, Calif.: Sage

Chein, I. Gerard, D.L., Lee, R. S., and Rosenfeld, E. (1964). The Road to H. New York: Basic Books.

Gandossy, R. P., Williams, J. R., Cohen, J., and Harwood, H. J. (1980). Drugs and Crime: a survey and analysis of the literature. Washington, D.C.: U.S. Department of Justice.

Goldstein, P. J. (1979). Prostitution and Drugs. Lexington, Mass.: D. C. Health.

Inciardi, J. A. (1979). Heroin use and street crime. *Crime and Delinquency* (July), 335–346.

Inciardi, J. A. (1975). Careers in Crime. Chicago: Rand McNally Company.

Inciardi, J. A., and Chambers, C. D. (1972). Unreported criminal involvement of narcotic addicts. *Journal of Drug Issues*, 2, 57–64.

Jacoby, J. E., Weiner, N. A., Thornberry, T. P., and Wolfgang, M. E. (1973). Drug use in a birth cohort. In National Commission on Marihuana and Drug Abuse. Drug Use in America: Problem in Perspective: Appendix, Vol. 1, pp. 300–343. U.S. Government Printing Office.

Kolb, L. (1925). Drug addiction and its relation to crime. *Mental Hygiene*, 9, 74–89.

Lettieri, D. J., Sayers, M., and Pearson, H. W., eds. (1980). Theories on Drug Abuse. Washington, D.C.: U.S. Government Printing Office.

McGlothlin, W. H., Anglin, M. D., and Wilson, B. D. (1978). Narcotic addiction and crime. *Criminology*, 16 (3), 293–315.

Nash, G. (1973). The impact of drug abuse treatment upon criminality. Report, State of New Jersey, Division of Narcotic and Drug Abuse Control; December, 1973.

Nurco, D. N., Bonito, A. J., Lerner, M., and Balter, M. B. (1975). Studying addicts over time: methodology and preliminary findings. *American Journal of Drug and Alcohol Abuse*, 2, 183–196.

Nurco, D. N., and DuPont, R. L. (1977). A preliminary report on crime and addiction with a community-wide population of narcotic addicts. *Journal of Drug and Alcohol Dependence*, 2, 109–121.

O'Donnell, J. A. (1969). Narcotic Addicts in Kentucky. Washington, D.C.: U.S. Government Printing Office.

O'Donnell, J. A. (1966). Narcotic addicts and crime. *Social Problems*, 13 (4), 374–385.

Pescor, M. J. (1943). A statistical analysis of the clinical records of hospitalized drug addicts. *Public Health Reports*, Supplement No. 143.

Ray, M. B. (1964). The cycle of abstinence and relapse among heroin addicts. In *The Other Side*, H. S. Becker (ed.). New York: The Free Press.

Robins, L. N., and Murphy, G. E. (1967). Drug use in a normal population of young Negro men. *American Journal of Public Health*, 57, 1580–1596.

Schasne, R. (1966). Cessation patterns among neophyte heroin users. *International Journal of the Addictions*, 1,

Strategy Council on Drug Abuse (1979). Federal strategy for drug abuse and drug traffic prevention, 1979. Washington, D.C.: U.S. Government Printing Office.

Terry, C. E., and Pellens, M. (1928). The opium problem. New York: Bureau of Social Hygiene.

Waldorf, D. (1970). Life without heroin: some social adjustments during long term periods of voluntary abstention. *Social Problems*, 18 (Fall), 228–243.

Weissman, J. C., Katsampes, P. L., and Giacienti, T. A. (1974). Opiate use and criminality among a jail population. *Addictive Diseases*, 1, 269–281.

TABLE 1.—TOTAL CRIME-DAYS AMASSED BY 243 MALE ADDICTS DURING YEARS AT RISK

Crime-days	Number of addicts	Percent of addicts
0 (none)	6	2.5
1 to 99	20	8.2
100 to 499	31	12.8
500 to 999	31	12.8
1,000 to 1,999	54	22.2
2,000 to 2,999	46	18.9
3,000 to 3,999	27	11.1
4,000 to 4,999	12	4.9
5,000 to 5,999	10	4.1
6,000 to 9,450	6	2.5
Total	243	100.0

Note: Total crime-days since onset of addiction: 473,738. Mean crime-days per addict: 1,998.9.

TABLE 2.—CRIME-DAYS PER YEAR AT RISK FOR 243 MALE ADDICTS

Crime-days per year at risk	Number of addicts	Percent of addicts
No crime-days	6	2.5
Less than 1 per year	11	4.5
1 to 49	35	14.4
50 to 99	26	10.7
100 to 149	31	12.8
150 to 199	32	13.2
200 to 249	25	10.3
250 to 299	26	10.7
300 to 349	28	11.5
350 to 365	23	9.5
Total	243	100.0

Note: Mean crime-days per year at risk: 178.5.

TABLE 3.—CRIME-DAYS PER YEAR AT RISK BY TYPE OF CRIMINAL CAREER AND ADDICTION STATUS

Crime career type	Number of addicts	Crime-days per year at risk	Crime-days per year at risk: Addicted	Crime-days per year at risk: Abstinent
1. Theft, daily	41	330.3	347.3	109.7
2. Sale of drugs, daily	13	328.0	353.2	88.3
3. Other crimes, daily	7	319.4	341.4	151.0
4. Weekly theft	58	189.6	280.9	23.3
5. Weekly sale of drugs	18	181.1	284.0	27.6
6. Weekly, other crimes	7	201.9	297.0	70.1
7. Infrequent theft	57	72.4	140.7	7.4
8. Infrequent sales	14	102.4	260.9	10.5
9. Infrequent, other crimes	22	46.8	108.2	2.3
No crime	6			
Total	243	178.5	248.0	40.8

TABLE 4.—CORRELATION MATRIX FOR 10 VARIABLES, FOR 237 MALE ADDICTS

Variable	Total Cd (1)	CD-H (2)	CD-off (3)	H-days (4)	Off-days (5)	Arrests (6)	Prior (7)	Race (8)	Onset (9)	Age (10)
1. Total crime-days	(1)									
2. Crime-days-heroin	[1] 0.9510	(1)								
3. Crime-days-off	[1] .3038	−0.0056	(1)							
4. Heroin days	[1] .7303	[1] .7914	−0.0768	(1)						
5. Off days	[1] −.1958	[1] −.2563	.1567	[1] −0.2200	(1)					
6. Total arrests	[1] .3191	[1] .3073	.0852	[1] .2999	−0.1488	(1)				
7. Prior crime	.1493	[1] .1796	−.0706	[1] .2875	.0171	−0.0338	(1)			
8. Race (black)	[1] .2585	.2712	.0003	[1] .2793	[1] −.2105	.0969	0.0966	(1)		
9. Onset age	[1] −.2564	[1] −.2295	−.1221	[1] −.1954	.0518	−.1362	−.0160	0.0596	(1)	
10. Age at interview	[1] .1859	[1] .2130	−.0551	[1] .4124	[1] .2978	[1] .2464	[1] .1278	[1] .2023	[1] 0.5101	(1)

[1] Values when $P<0.01$.

TABLE 5.—STEPWISE REGRESSION ANALYSIS OF CRIMINALITY FOR ADDICTION AND ABSTINENCE PERIODS AMONG 237 ADDICTS

Variable	r	Prob. to enter	R^2	R^2 change	Multiple R
A. Dependent variable: Crime days heroin:					
1. Days H	0.7914	<0.001	0.6264	0.6264	0.7914
2. Age at interview	.2130	.002	.6419	.0155	.8012
3. Arrests	.3073	.019	.6503	.0084	.8094
4. Race	.2712	.904	.6545	.0042	.8090
5. Prior crime	.7196	.329	.6659	.0014	.8099
6. Age at onset	−.2295	.495	.6666	.0007	.8103
7. Days off	−.2563	.717	.6568	.0002	.8105
B. Dependent variable: Crime days off:					
1. Days off	.1567	.016	.0245	.0245	.1567
2. Age at onset	−.1221	.043	.0416	.0170	.2039
3. Arrests	.0852	.144	.0503	.0088	.2243
4. Age at interview	−.0551	.129	.0597	.0094	.2448
5. Race	.0003	.295	.0642	.0045	.2533
6. Prior crime	−.0706	.364	.0675	.0034	.2599
7. Days H	−.0768	.627	.0685	.0010	.2617

TABLE 6.—STEPWISE REGRESSION ANALYSIS OF CRIMINALITY FOR 156 ADDICTS ENGAGED IN THEFT

Variable	r	Prob. to enter	R^2	R^2 change	Multiple R
A. Dependent variable: Crime days heroin:					
1. Days H	0.8046	<0.001	0.6473	0.6473	0.8045
2. Age at interview	.2825	.011	.6520	.0137	.8136
3. Race	.2570	.081	.6588	.0067	.8178
4. Arrests	.3219	.141	.6735	.0047	.8207
5. Prior crime	.1595	.359	.6736	.0018	.8218
6. Age at onset	−.2119	.417	.6768	.0014	.8227
B. Dependent variable: Crime days off:					
1. Days off	.2537	.001	.0644	.0644	.2537
2. Prior crime	−.1087	.167	.0760	.0116	.2757
3. Age at onset	−.1202	.195	.0862	.0102	.2936
4. Race	.0071	.264	.0938	.0076	.3062
5. Days H	−.1175	.260	.1014	.0077	.3185
6. Arrests	−.0001	.609	.1030	.0016	.3209
7. Age at interview	−.0591	.615	.1045	.0015	.3233

TABLE 7.—STEPWISE REGRESSION OF CRIMINALITY FOR 45 ADDICTS ENGAGED IN DRUG SALES (DEALING)

Variable	r	Prob. to enter	R^2	R^2 change	Multiple R
A. Dependent variable: Crime days heroin:					
1. Days H	0.8414	<0.001	0.7080	0.7080	0.8414
2. Prior crime	.1252	.185	.7201	.0121	.8486
3. Onset age	−.1244	.230	.7299	.0098	.8543
4. Days off	−.1734	.440	.7339	.0041	.8567
5. Arrests	.1523	.667	.7352	.0013	.8574
6. Age at interview	.4073	.709	.7362	.0010	.8580
7. Race	.3633	.694	.7373	.0011	.8587
	r	Prob. to enter or remove	R^2	R^2 change	Multiple R
B. Dependent variable: Crime days off:					
1. Arrests	0.3251	0.029	0.1057	0.1057	0.3251
2. Age at interview	−.0699	.353	.1241	.1084	.3522
3. Onset age	−.1724	.682	.1277	.0036	.3573
4. Days H	−.0938	.530	.1364	.0087	.3692
5. Age removed	−.0699	.979	.1363	−<.0001	.3692
6. Race	.0550	.442	.1492	.0129	.3862

TABLE 8.—STEPWISE REGRESSION OF CRIMINALITY FOR 36 ADDICTS ENGAGED IN OTHER CRIMES

Variable	r	Prob. to enter	R^2	R^2 change	Multiple R
A. Dependent variable: Crime days heroin:					
1. Days H	0.6675	<0.001	0.4455	0.4455	0.6675
2. Arrests	.4683	.027	.5229	.0774	.7231
3. Age at interview	−.0551	.066	.5714	.0486	.7559
4. Prior crime	.3597	.278	.5876	.0162	.7666
5. Race	.2969	.310	.6018	.0141	.7757
6. Days off	−.2637	.700	.6038	.0021	.7771
7. Onset age	−.3219	.406	.6137	.0098	.7834
B. Dependent variable: Crime days off:					
1. Arrests	.4191	.011	.1756	.1756	.4191
2. Age at interview	−.0552	.410	.1926	.0170	.4389
3. Days off	−.0197	.237	.2277	.0351	.4772
4. Prior crime	.0857	.466	.2410	.0133	.4910
5. Onset age	−.1330	.553	.2500	.0090	.5000
6. Days H	.0827	.721	.2534	.0034	.5034

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES ACT

The Senate continued with consideration of the bill.

UP AMENDMENT NO. 60

(Purpose: To strike section 108)

Mr. ARMSTRONG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Colorado (Mr. ARMSTRONG) for himself and Mr. PROXMIRE, proposes an unprinted amendment numbered 60.

"Beginning with page 22, line 11, strike out all though page 24, line 15."

Mr. ARMSTRONG. Mr. President, the amendment which I have sent to the desk on behalf of Mr. PROXMIRE and myself addresses itself to an amendment which was adopted by the Banking Committee during the consideration of this bill. I should like to take just 1 minute to explain the amendment. Before I do so, I ask unanimous consent that the Senator from New York (Mr. D'AMATO), and Senators GARN, LUGAR, and TOWER, be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ARMSTRONG. Also, Mr. President, while I am on my feet, let me congratulate the managers of the bill for this important and worthy effort to expand the export trade of this country. It is a good bill. It is a bill of which I am a cosponsor, and one which I certainly intend to support.

Mr. President, during the course of committee consideration, the Committee on Banking inadvertently, in my judgment, added a section to the bill which is most unfortunate, an amendment to allow the Secretary of Commerce to grant up to $40,000 to small business manufacturing firms to help them defray the cost of hiring an export manager. I oppose this part of the bill, not because I am against export managers—I am sure such managers can be helpful to companies who are breaking into the export business—but because I can see no rational justification, particularly at a time of budget restraint, for the Federal Government to be in the business of picking up the cost of such export managers. In my opinion, that is a proper business function, not a proper function of Government.

Mr. President, with that brief word of explanation, I inquire if it would be the disposition of the managers of the bill to accept this amendment so we can avoid a recorded vote on it and save the time of the Senate.

Mr. RIEGLE. Will the Senator yield?

Mr. ARMSTRONG. Yes, I am happy to yield.

Mr. RIEGLE. Mr. President, I might say that others and I supported this item in the committee. I should want to oppose the Senator's amendment and therefore want a debate and propose we vote on it eventually.

Mr. ARMSTRONG. Mr. President, I am happy then to have the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ARMSTRONG. Mr. President, I believe I have made enough explanation of the essence of the amendment but I shall yield the floor at this time to see what other Members have to say. If questions or objections are raised, I shall be happy to respond.

Mr. RIEGLE. Mr. President, may I inquire in terms of the time in opposition to the amendment, would that be controlled by my colleague from Wisconsin?

The PRESIDING OFFICER. There is no control of time.

Mr. HEINZ. Mr. President, let me state for the benefit of my colleague, there is no time agreement on this bill. So the Senator may be recognized to have as much time as he can conceivably consume.

Mr. RIEGLE. I thank the Senator from Pennsylvania. I shall try to be brief, although I do think this is an important issue.

Mr. President, I might say that the part of the bill which the Senator from Colorado is attempting to strike out is a part that was supported within the committee and has been debated at some length. I think it is a very important section of the bill.

Actually, section 108, which is targeted here by the amendment, is a strong small business program. It is aimed at small business in ways that I shall shortly describe. I might say that this part of the bill was also included in last year's bill, so this has been around for a period of time. It was acceptable last year, was part of the bill last year, and is again today on the floor.

The program that is marked out in this section would make possible the employment of export managers by small business manufacturing firms which have not previously been exporters in substantial amounts. Firms which are new to exporting and do not already have an exporting manager would be eligible to compete for grants of 50 percent of the export manager's salary and expenses or a maximum amount of $40,000, whichever is less. Section 108 establishes a pilot program to test a promising new approach to export expansion and then evaluates its effectiveness in generating increased export sales.

It would help defray the costs of hiring an export manager by making 1-year grants—that is all they are, 1-year grants—to enable the company paying half the price of the export manager to get into this business. If it pans out, as we think it will in most cases after the first year, they are on their own and will have to pick up the full expense on their own. It is a very modest initiative.

The program as a whole would be funded at a level of only $2 million a year for 3 years. That would be enough to provide somewhere between 150 and 300 of these grants to small businesses with high export potential to be able actually to break into this business and make a serious effort at developing foreign markets abroad for U.S.-built products.

Mr. President, the Commerce Department forecasts that the U.S. balance-of-trade deficit will reach a record level of $33 billion in 1981. In my view, we are simply not adjusting to the new situation of world interdependence brought about in part by increased petroleum prices but also, in part, by the greater competitiveness of our trading partners.

Mr. President, I think we have to face up to the fact that there is a need to expand our exports and be aggressive about it if we are going to be able to pay for our exports and prevent further deterioration of the dollar and the effect that that would have on inflation in the United States. It would have the effect of increasing inflation in the United States.

I think a key opportunity for expanding our exports lies in the 18,000 small- and medium-sized businesses which could be selling their products abroad today, but are not. The Department of Commerce estimates that as many as 10,000 of these 18,000 firms have an interest in exporting but are unable to overcome the initial barriers to getting started: Lack of information about foreign markets and lack of expertise to handle the technical problems of selling, financing, and shipping products abroad and the unfamiliar business practices of foreign customers. In addition, there are foreign exchange uses and things of that sort.

An obvious way for a firm to solve these problems is to put an experienced export manager on the payroll. But most smaller firms cannot afford to take the frontend risk of the full cost of an export manager's salary, fringe benefits, and expenses. The export manager grant program will help such firms make a commitment to exporting by offering a 50-percent subsidy not to exceed $40,000 for the first-year costs of adding such a person to the firm.

Any small company that would want to compete for these grants would be in competition with any other company across the United States, with the Department of Commerce to select the most promising companies that have come forward for this particular incentive grant who really want to make a serious effort to crack into the export market.

There is a magazine named "INC," which has a circulation of 400,000 in the United States, mainly to small business executives. It has a lead article in the March issue which favors the expanded export trade approach that I am discussing. With regard to this bill, S. 734, the article states as follows:

Congress is considering amendments to the Webb-Pomerene Act and to banking laws that will permit American firms to organize full service trading companies similar to those that have helped Japan achieve its remarkable export success. The bill would help place large and small American firms on an equal footing with other countries' exporters. Of particular concern to Congress has been the estimated 20,000 small businesses that could be exporting but are not; included in the proposal are provisions for

grants to cover initial salary costs for export managers in qualified small businesses.

So I say that section 108 should remain in this bill. It will help small business in this country. It has strong small business support. It will help create new jobs and new opportunities in terms of penetrating what is an expanding world market.

It is an absolutely modest amount of money, and one with high leverage potential in terms of opening up export markets, reducing our balance-of-payments deficit, and creating jobs in the United States.

It is designed in such a way because it is a cost-sharing grant and a 1-year grant. Beyond that point, if a firm wants to continue, it is on its own. I hope we can take this step.

I conclude in this way: I believe we have to face the fact that major exporting nations such as Japan are today assisting business in their country in every conceivable fashion. They are doing it with financial capital incentives. They are doing it with help with respect to Government regulation. They are doing it by coordinating their foreign policy initiatives to try to open the way for their domestic companies to compete aggressively abroad. Certainly, we see the effects of that in the United States, but they can be seen around the world.

In the United States, we have done very little to help business, large or small, in terms of this new world market environment, to be able to compete more effectively. We have lived with an old notion that we do not have to pay that much attention to developing world markets for our products. That has to change. We have 18,000 to 20,000 small businesses in the United States that have a very good potential for becoming export companies, but they have not yet done so. We must save a way to encourage them to get into this act in a serious fashion and to sell these goods aggressively abroad, because it will benefit the United States.

I have confidence that because the amounts are small and because the cost sharing is only for the first year and it is 50–50, this is exactly the kind of balanced initiative that even the new administration has in mind, in terms of stimulating the private sector, creating private jobs, and opening up areas of economic potential. In the past, we have not done enough of that.

I hope the Senate will accept the measure as it is written. It has been crafted carefully. I know that the Senator from Colorado objects to it because it is a new initiative, but I do not think we should always object to something because it is a new initiative. From time to time, we have modest, well-balanced, well-constructed, relatively inexpensive initiatives, with a very high potential payoff in the private sector, with jobs, with reduction of our balance-of-payments deficit, and this is exactly the kind of initiative we should be taking. Otherwise, we will see ourselves sliding backward in world market competition, and I do not believe that is something we can afford.

Mr. PROXMIRE. Mr. President, I am pleased to cosponsor this amendment by the distinguished Senator from Colorado. I support his position on it.

The Senate should strike section 108 from the bill. Section 108 authorizes $2 million of Federal money each year for 3 years for grants to subsidize salaries of export managers, up to $40,000 a year.

That means that if the firm pays him $40,000, the Federal Government will match it with another $40,000, for an $80,000 payment. It seems to me that such expenditures from the Federal trough would be nothing short of outrageous. All Americans today are being asked to sacrifice by budget cuts. I support deep budget cuts, as do others, because we need to reduce inflation. Less Government expenditures is a quintessential way to stop inflation.

Now comes section 108. Under what possible theory can we justify paying export managers employed in private enterprise a Federal subsidized salary of $40,000? This, of course, would be on top of the salary they receive. What a precedent. Where do we stop?

Should the Federal Government pay a subsidy to college professors at Harvard or Yale or the University of Michigan or the University of Wisconsin or Slippery Rock—a $40,000 subsidized salary? After all, college professors serve the public interest at least as nobly as export managers.

How about a Federal subsidy to pay a $40,000 salary of Red Cross administrators or Salvation Army generals or dairy farmers or coal miners or foundry workers?

There is no end to worthy occupations in this country, people who do very constructive work in our economy. I am sure business would love it if they were paid an additional $20,000, $30,000, or $40,000 by the Federal Government.

I submit that if you walked down the street of any town in my State and asked the first small, independent businessman you met whether he would support a $40,000 subsidy from the Federal Government to pay anybody's salary in the private sector, he would say, overwhelmingly, "No."

How this can be tagged as a small business amendment is beyond me. I am sure that the overwhelming proportion of small businessmen want less Government, not more; less Government subsidies, not more.

At a time when he have passed a second concurrent resolution in matching the President's cuts, for us to come along now with a new program to provide subsidies of up to $40,000 to pad the salaries of people in the private sector is absolutely wrong.

I hope the amendment of the distinguished Senator from Colorado is supported.

Mr. RIEGLE. Mr. President, may I be recognized in response to that?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I want to respond to the comments of my colleague and friend from Wisconsin, because I think that, in his criticism, he misstates what we have in mind here. Let me make it very clear.

We are talking about a maximum of $40,000. It might be $30,000; it might be $25,000; it might be $20,000.

Mr. PROXMIRE. That is precisely what I said. It could be $30,000, $40,000, $10,000, whatever. It has to be matched.

Mr. RIEGLE. I am glad to have that clarification, because it would not be $40,000 in all instances. That is a ceiling figure. In perhaps a handful of cases, it might go as high as that, but that is a maximum figure, and that is not a set figure. That is not a figure that would necessarily apply in all cases. It might be half of that in some cases.

I want to go on and make a couple of other points.

The Senator from Wisconsin indicated that this would be for the salary. I want to make clear that it is not just for the salary. The task of employing an export manager does not involve only paying the salary in the normal compensation package of a skilled employee in a firm of this kind. An export manager normally has to travel, has to go to foreign countries, depending upon the scope of the foreign market situation that a particular export manager might be trying to develop or explore. The cost of international travel expenses associated with that—long distance phone calls overseas, things of this kind—I am contemplating that expenses of this kind, associated with carrying out an active export manager's role over the course of a year, could conceivably be a figure as high as $80,000.

Mr. PROXMIRE. Mr. President, if the Senator will yield, it seems to me that makes it much worse. We not only subsidize salaries but you have all kinds of expenses. Consider. After all, these export trading companies will often be in competition with each other. We are going to subsidize a small number because it is only $2 million, up to $40,000. Whom do we subsidize and whom do we not?

Talk about unfair competition—in one case the Federal Government is stepping in with a subsidy of $40,000, maybe $20,000 or $30,000, and in the other case it will not be subsidizing at all.

Why not solve the problem by not providing money, not spending the Federal money?

Mr. RIEGLE. Mr. President, I will not yield further.

I will answer by saying that does not solve the problem. The Senator is not offering an answer for the problem. I might say very directly we have a situation here where we are not doing well in terms of our trading relationships abroad. Our balance of payments is increasing. It is adding to inflation. It is undercutting the value of the dollar. We have to do something about it. We have to become more aggressive in terms of trading in this new world economy, and we have to help the small companies get into this act and not just the big giants.

What we have here is a very small program. We are talking about $2 million a year. Small firms can compete for

it, a maximum of $40,000 for 1 year on a pilot basis, to hire a competent export manager to get in to this act to see if we cannot start selling more American products abroad.

Why can we not do something once in a while to help the private sector here in the United States and create jobs?

My goodness, I thought that was supposed to be part of the theme of the new administration, and if it is, it is one I support.

We have 20,000 firms in the United States that have been identified as high-potential firms, small companies that could be out selling our products abroad and providing jobs and capital here in the United States, and we need to move on that problem, and it is competitive.

Any small company that feels it has this kind of potential and is willing to make half the investment for the first year could come in and submit an application of that sort, lay out their plan, and the Department of Commerce would make an evaluation and would select the ones that have the highest potential, and it is a 1-year situation and at the end of that year if it is valuable, then the companies themselves have to carry it forward without a dime from the U.S. Government.

But the fact of the matter is we will get this money back and we will get it back with big dividends.

Let us not be blind to what is happening to us in this world economic situation. We have small companies all across the United States that have potential to grow into big companies if they can get into these foreign markets.

There are an awful lot of people who live around the world who should be buying more American goods. This is an intelligent, modest, rational, very, very carefully targeted way to try to wedge ourselves into that picture.

We can just sit here in a fortress America and think we have all the economic strength that we need and ignore the fact that we are spending $100 billion a year for foreign oil, spending $10 billion a year this year in the net loss on cars and trucks just to Japan, and do nothing about it.

I am trying to offer something here and the reason the committee accepted this amendment in the first place, not this year but last year, is that this is a positive, aggressive effort, modest in scope, scaled down by targeting exactly on the problem.

Let us start selling American goods abroad. Let us help the smaller companies get into this act. That is what we are striving to do here and it makes good sense. It makes good economic sense.

In recent years much attention has been devoted to the need for the United States to improve its export performance. International trade has become substantially more important to the United States than in earlier years because of the direction of world events and the increasingly clear necessity to develop a strong export position to enhance the economic strength and welfare of our Nation, strengthen the value of the dollar, and increase employment. Exports now account for one of every eight jobs in America's factories and one in every four on America's farms.

Despite our historical national attitude of overall indifference to the need for exports, recent trends have made it obvious that we are living in a new international economic environment and we are not adjusting to it successfully. Although roughly 30,000 U.S. companies are now exporting, this figure includes only about 1 out of every 10 U.S. companies. Moreover, only 100 companies account for nearly one-half of all U.S. exports of manufactured goods. It is clear that many American companies are not taking full advantage of foreign market opportunities.

Export promotion and expansion has been recognized by Congress as critical to restoring the health of our economy. This year the U.S. balance-of-trade deficit may run to $50 to $60 billion. Clearly, we are not expanding our exports fast enough to pay for the increased imports brought about in part by oil price rises and in part by the greater economic strength and competitiveness of many of our trading partners. The United States simply can no longer delay a much more aggressive effort at export expansion.

A major opportunity for this expansion lies in the 20,000 businesses the Department of Commerce estimates could be exporting but are not. The increased participation of American businesses in exporting has been recognized as a national priority. Nonetheless, a number of factors discourage these firms from participation in foreign trade. This inactivity constitutes benign neglect of billions of dollars in potential export business.

The legislation before the Senate, the Export Trading Company Act of 1981, represents a multifaceted approach to the problem of restoring export competitiveness to the American economy. S. 734 is the product of nearly 3 years of concerted effort in the Senate and extensive hearings have been held on its provisions. The basic intent of this legislation is to encourage exports by facilitating the formation and operation of export trading companies. To this end, S. 734 deals effectively with two serious impediments in current law to the formation of export trading companies—the bar to U.S. banks having an equity position in, or control of these trading companies and the current uncertainty regarding antitrust exemptions for them under the Webb-Pomerene Act. By permitting U.S. banks to acquire ownership in export trading companies under specified conditions and with sufficient safeguards, banks will be encouraged to be active rather than reactive in export activities, providing needed financial resources and expertise. S. 734 also expands and clarifies the antitrust exemption for export trade associations and establishes a specific certification procedure that will eliminate the element of uncertainty in the current law.

I believe facilitating the establishment and operation of export trading companies is an important approach. This legislation had my enthusiastic backing in the last Congress and continues to have my equally enthusiastic support today. Mr. President, as a member of the Senate Banking Committee I have consistently supported the Export Trading Company Act and today I urge speedy consideration and passage of this important legislation.

I commend the Senator from Pennsylvania for his assistance and help on this matter.

Mr. HEINZ. Mr. President, I reluctantly rise in opposition to the amendment of my friends, Senator ARMSTRONG and Senotor PROXMIRE, but I can do no less in this instance because as they know I was strongly in opposition to their position in the committee. I supported the Riegle amendment because I think it is meritorious for all the reasons my good friend from Michigan has stated. I wish to point out to my colleagues that after a very full debate in the committee the decision was made that the Senator's amendment made sense.

I think it is important that we provide the authority to do some experimentation, to try to make sure that if we are not getting the kind of progress we would like to see on export trading companies, that we have a tool in our kit with which to operate.

There are two points I wish to make here.

The first is that we all know the potential of export trading conpanies. The largest trading company that I know of has a whale of a lot of recognized potential. The Mitsubishi Trading Co., just in terms of its international transactions, exports, imports, worldwide transactions, does $60 billion a year.

Some of the smaller export trading companies do $20, $15 or $10 billion, not million, billion.

I would hate to see us inadvertently throw away the key that opens the door to the United States playing the kind of role that we are capable of playing but that heretofore we have been unable to play in international trade. It strikes me that this very modest provision, which would provide on an experimental basis to certain small businesses an export manager for no more than 12 months, might very well prove to be the kind of key that we need to unlock our export potential the same way other nations of the world have already done.

One other thing I would say is that the amount of money involved in this section of the bill, section 108, is indeed very small. Notwithstanding the fact that it is small I think we all recognize that we want to minimize outlays in fiscal 1981, 1982, and 1983.

We know we are in a tight budget situation, and leaving this section in the bill, does not preclude the Appropriations Committee from not funding this provision, should it decide to do so.

But if we take it out of the bill it will be excluded from consideration, probably for the foreseeable future, and that, I submit, is neither necessary nor wise.

If the Appropriations Committee decides not to fund it, I will support that decision.

But I think it is a mistake to remove the authorization, to remove the oppor-

tunity to take necessary steps at some future time should we so decide.

So, Mr. President, I oppose the Armstrong and the Proxmire amendment. I understand their motivation. They are nothing but the best, as I would expect. It is just that we have a disagreement.

Mr. ARMSTRONG. Mr. President, I appreciate the cheerful demeanor of the Senator from Pennsylvania, and I wish to respond in kind.

I am sorry we are not in full agreement on this matter.

I wish to sum up where we are.

The amendment that has been offered by the Senator from Wisconsin (Mr. PROXMIRE) and I, and a number of our cosponsors, simply strikes from the bill the existing provision which permits the Secretary of Commerce to grant $40,000 to export companies or to companies who wish to become export companies to hire export managers.

The Senator from Michigan has suggested I am against this because it is a new initiative. That is not the case at all. I am against it because it is a very poor idea. It is an idea of getting the Government into the business of deciding which companies should have export managers and which of them should have export managers paid for by the Federal Government. In my opinion, that is it. It is unrelated to the budget stringencies as a matter of policy. In fact, if I thought this were a good idea, which I do not, it is still not a timely idea. This is a year of budgetary restraint. It is the year where we are going to cut back on food stamps, nutrition programs, and Eximbank. We are going to cut back on foreign aid. We are going to cut back on housing programs. We are going to cut back on every traditional worthy program of the Federal Government.

And it is no year, in my judgment, to start up something new, especially something as questionable as this.

Second, it is suggested that this is a pro-small business idea. I will tell Senators this, I never talked to any small businessmen who think that the way to help them is to create new Government programs or to have the Federal Government doling out new employment. The Senator from Wisconsin is entirely right.

Third, it is suggested that this is just a small amount so what, it really does not amount to anything in a $1 trillion budget. It is only a couple million dollars.

That is true, Mr. President. I wish to point out based on this formula we are only talking about maybe a handful of firms. Yet the Senator from Michigan who proposed this idea in the first place said there are as many as 20,000 firms in the country that might conceivably need and qualify for this kind of a program.

So what we are really seeing here is an establishment on a small scale on an idea which has enormous budgetary consequences if it catches on and if in fact it is funded.

Last but not least, we are told by the Senator from Pennsylvania that this is just an authorization. Let us put it in here and see whether or not the Appropriations Committee will fund it.

I suggest to Senators that we are the policymakers. Let us make a decision now. I hope that the Senate will adopt the amendment, take this unwise provision out of the bill, and I point out that the very people who are expected to administer this provision, that is to say the administration, says that the amendment which Senator PROXMIRE and I have offered is a proper one and one which they support.

So, for all those reasons, I call for the adoption of the amendment.

Mr. President, it would now be my suggestion—I think we have completed debate on this issue, the yeas and nays have been ordered—and after consultation with the floor manager of the bill and with the leaders, I ask that we set-aside further consideration of this and proceed to the consideration of an amendment which Senator PROXMIRE and I are going to offer on a similar although—a similar subject so that we can have back-to-back votes on it if, in fact, a back-to-back vote is required.

Mr. HEINZ. Mr. President, I know of no objection on our side.

Mr. RIEGLE. I would have to object on this side because, first of all, I want a vote in order to find out where we are because I want to propose putting something in if this were to succeed. I hope it will not, but I want to know where we stand before we go any further.

The yeas and nays have been ordered, and if there is no further comment at this time I suggest that we vote and settle the issue.

Mr. ARMSTRONG. In view of the objection of the Senator from Michigan, we have no other recourse than to do so.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, before the roll is called, I ask unanimous consent that I be added as a cosponsor of the amendment of the Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I would be honored to do so. I ask unanimouse consent that the Senator from Virginia be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. EAGLETON. Mr. President, I strongly support expansion of U.S. export trade. It is good for this country's balance of trade and it is good for the profits of businesses that find foreign markets. But, I can find no justification whatsoever for the American taxpayers to be subsidizing the salaries of an export manager for these companies. The administration tells us we cannot afford CETA job training funds for unemployed youth and we have cut that program severely. We cannot afford to properly feed our elderly. And, yet, this provision would subsidize up to half the salary of an $80,000 a year executive for some profitmaking business. I strongly support taking this provision out of the bill.●

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado.

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER), and the Senator from Oregon (Mr. PACKWOOD), are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. DURENBERGER) would vote "yea."

Mr. CRANSTON. I announce that the Senator from Illinois (Mr. DIXON), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Alabama (Mr. HEFLIN) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. BRADLEY) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 68, nays 25, as follows:

[Rollcall Vote No. 81 Leg.]

YEAS—68

Abdnor	Garn	Nickles
Armstrong	Glenn	Nunn
Baker	Goldwater	Percy
Bentsen	Gorton	Pressler
Boren	Grassley	Proxmire
Boschwitz	Hatch	Pryor
Bumpers	Hatfield	Quayle
Byrd, Harry F., Jr.	Hawkins	Roth
Byrd, Robert C.	Hayakawa	Rudman
Cannon	Helms	Sasser
Chafee	Hollings	Schmitt
Chiles	Humphrey	Simpson
Cochran	Jepsen	Stafford
Cohen	Johnston	Stennis
D'Amato	Kassebaum	Stevens
DeConcini	Kasten	Symms
Denton	Laxalt	Thurmond
Dole	Lugar	Tower
Domenici	Mattingly	Tsongas
Eagleton	McClure	Wallop
East	Metzenbaum	Warner
Ford	Mitchell	Weicker
	Murkowski	Zorinsky

NAYS—25

Andrews	Helms	Matsunaga
Baucus	Inouye	Melcher
Biden	Jackson	Moynihan
Burdick	Kennedy	Pell
Cranston	Leahy	Randolph
Danforth	Levin	Riegle
Dodd	Long	Sarbanes
Exon	Mathias	Specter
Hart		

NOT VOTING—7

Bradley	Heflin	Williams
Dixon	Huddleston	
Durenberger	Packwood	

So Mr. ARMSTRONG's amendment (UP No. 60) was agreed to.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ARMSTRONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 61

(Purpose: To strike out section 106)

Mr. PROXMIRE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE), for himself and Mr. ARMSTRONG, proposes an unprinted amendment numbered 61:

Beginning with page 20, line 19, strike out all through page 21, line 12.

Redesignate succeeding sections accordingly.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that Senator NICKLES be added as a cosponsor on the preceding amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, this amendment I have sent to the desk is cosponsored by the distinguished Senator from Colorado (Mr. ARMSTRONG). This amendment strikes section 106 from the bill. Section 106 authorizes $10 million to be spent in each of the years 1982 through 1986, or $50 million for operating expenses of export trading companies. The original provision in committee was to authorize $100 million. On the morning of the markup, the administration made it plain it did not favor the provision at all. So the committee cut the $100 million authorization to $50 million. The amendment would cut it to zero. That would be in accordance with the administration's position.

I read an excerpt from a letter from the Secretary of Commerce, which says:

While the administration sympathizes with the goal of providing some direct financial backing for trading companies, we cannot advocate such a course in light of overall budget priorities.

Mr. President, there is no excuse to spend Government money for this purpose. Section 106 sends out the wrong signal to the American people. In considering Senate Concurrent Resolution 9, the Senate debated expenditures for veterans benefits, school lunches, social security benefits, and other social programs. Many of them were cut by 25 percent. Can we seriously propose $50 million more in this bill? Here we are authorizing $50 million that the Reagan administration does not want and tells us they do not need. Does it make any sense to spend $50 million on a new program, a program this administration enthusiastically supports, when the same administration tells us they do not want, do not need, this money?

The Secretary of Commerce tells us they cannot advocate such a course in light of overall budget priorities.

Mr. President, I think all of us are very much aware of the fact that only a few days ago the Senate passed a resolution which was certainly unprecedented in recent years, which sharply reduced the rate of spending in a whole series of programs and actually made some very, very sharp cutbacks in others.

Some of those votes were agonizing for many Members of the Senate. For us to come along now with a new program and add $50 million at a time when the administration says they do not need it, do not want it, seems to me to be extraordinarily contradictory. It certainly would indicate we do not have the kind of convictions about economy and fiscal responsibility that we showed only a few days ago.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. MURKOWSKI). The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I rise in opposition to the Proxmire amendment. What the amendment seeks to do is essentially strike all of section 106, which authorizes the Economic Development Administration and the Small Business Administration to assist export trading companies, with loan guarantees or operating grants in meeting starting up expenses, in the process giving special weight to export benefits, and to furthering the involvement of minority business or agricultural concerns in the export market.

The Senator from Wisconsin has accurately stated that we cut the money in half in the committee from an annual authorization of $20 million to $10 million.

There was, however, also an implication in the Senator's statement that the administration has some programmatic problems with the amendment.

I think a careful examination of the testimony in the hearing record will reveal that Secretary Baldrige does not have any programmatic problem. He does have a budgetary problem, which I will speak to in a moment. But as to any programmatic concerns, Secretary Baldrige, in answer to my question in that regard, said:

Senator, I am sure you understand. We don't think those two provisions are necessarily that bad. It is this very difficult kind of budget cutting we have to do.

So the issue is money. In this case, Mr. President, when people say it is not the money but it is the principle of the thing, as is often the case in real life, you can be sure it is a question of money, not principle.

The fact is that this provision in the bill does not commit the administration or the Appropriations Committee to spend 1 cent. The reason this authorization, a noncumulative authorization, by the way—over 5 years, 1982 through 1986—is here is so that, in the event we decide that because of budgetary austerity, we cannot afford to do anything here in 1982 or 1983, we have the standby authority in 1984, 1985, and 1986 to do something.

Mr. President, this is a 5-year authorization. It means it will not be very easy to get at it again until 1986. That is an extremely long way away, and it is well into the time when we shall have, according to President Reagan's economic forecast, vast budget surpluses, shortages of employees, not shortages of jobs, and inflation so low that we can hardly see it. And let me say, Mr. President, all those scenarios are welcome, indeed.

It does not make a lot of sense to this Senator to foreclose for the promising years of 1984, 1985, and 1986 an opportunity to do something we might well want to do.

Mr. PROXMIRE. Will the Senator yield on that?

Mr. HEINZ. Not yet.

I might add, Mr. President, that programmatically, it is the small, new trading company, dealing primarily with smaller businesses, that is going to have the most difficulty getting started. It is that small, new trading company that is going to be most in need of the kind of assistance that section 106 can provide.

Mr. President, I believe that the thrust of the Proxmire amendment is to discriminate most against the very people we are trying to help the most; namely, small businesses. Incidentally, Mr. President, I think we are all very proud of our record of supporting small businesses. I know Senator PROXMIRE and Senator ARMSTRONG are, but in this instance, they are striking the established means of helping small business—the Small Business Administration and the Economic Development Administration. Not only that, the Secretary of Commerce as much as admits that he does not have any alternative ways to increase small or minority business involvement in these export trading companies.

So, Mr. President, I hope the Senate understands that this amendment is very different from the last one, where, I think, although I did not agree with it, there was a programmatic case made against the amendment. I do not think we can make a programmatic case against this amendment and neither does the administration.

UP AMENDMENT NO. 62

Mr. President, having said that, I do recognize that people here are terribly nervous about budgetary matters. So I am prepared to take what I believe is an appropriate middle ground. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an unprinted amendment numbered 62.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the material proposed to be stricken, insert the following:

INITIAL INVESTMENTS AND OPERATING EXPENSES

SEC. 106. (a) The Economic Development Administration and the Small Business Administration are directed, in their consideration of applications by export trading companies for loans and guarantees, and operating grants to nonprofit organizations, including applications to make new investments related to the export of goods or services produced in the United States and to meet operating expenses, to give special weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small, medium-size, and minority businesses or agricultural concerns in the export market.

(b) There are authorized to be appropriated as necessary to meet the purposes of this section $5,000,000 for each of the fiscal years 1982, 1983, 1984, 1985, and 1986. Amounts appropriated pursuant to the authority of this subsection shall be in addition to amounts appropriated under the authority of other Acts.

Mr. HEINZ. Mr. President, essentially, what this amendment does is cut the amount of money in the bill per year from $10 million to $5 million for each of the 5 fiscal years, 1982 through 1986.

It is my hope that my colleagues, in the spirit of compromise, will accept this amendment as an alternative to what is being offered.

Mr. ARMSTRONG. Mr. President, I congratulate the Senator from Wisconsin for taking the lead with this amendment. I am pleased to join him as a cosponsor to the proposal to strike the funding authorization from this bill. I, for one, am opposed to the amendment offered by the Senator from Pennsylvania which, although it leads in the right direction, nonetheless leaves an authorization of $25 million of spending in a bill which requires no money whatsoever.

The bill we are considering, of which I am a cosponsor, is to be permissive, to say that certain private sector entities are to be permitted to form export trading companies in order to stimulate the growth of American exports. In other words, we are saying, "Here's an open door; if your company thinks it can make some money by going through that door, go ahead." Now we are talking about paying people to take this step across the threshold to international trade. This does not make sense from a free enterprise standpoint, it does not make sense from an export standpoint, and it certainly does not make sense, in a time when we are in the tightest budget fix that we have ever been in in the recollection of any lifvng Senator, to say that we would authorize $25 million for such an unusual kind of spending just does not make any budgetary sense.

The bottom line is this, Mr. President: This is welfare for exporters. We can beat around the bush about it, but that is exactly what it is. If we pay people to go into the exporting business, that is a subsidy. A less polite, less tactful name for it is welfare. As one who has voted rather consistently to curb the growth of welfare in this country, I, personally, am not about to vote to pay for this kind of program.

Mr. President, the administration agrees that the money is not needed. The Secretary of Commerce has written a letter outlining his opposition to this authorization. The Office of Management and Budget is opposed to this authorization, and I am certain that my colleagues on the Senate Budget Committee, who, right now, are meeting, seeking to find additional cuts to make so we can have a balanced budget in 1984, if not sooner, are certainly not going to support this.

Mr. President, the Senator from Pennsylvania is correct that this is only an authorization. Yet we all know that the game around here is to get something slipped into a bill as an authorization with the understanding that, after all, it is only an authorization and the final decision is for the appropriations process. But, once something is authorized, the argument is suddenly reversed. Then we are told, in support of a small initial appropriation, that we have to vote for this; after all, this has been authorized by law and we have made an implied commitment, a promise, we have set up a program, surely we are not going to vote to cut out something supported by law. So we get whipsawed back and forth.

Mr. President, there is no justifiable reason for a $50 million authorization, there is no justifiable reason for a $25 million authorization. The administration is against it. I guess I have made it clear that I am against it.

Let me emphasize in closing, Mr. President, that I am strongly in favor of the purpose of the bill, which is to remove existing legal restrictions on the right of certain private companies to form export trading companies. I think the future of this country's economy, in industry and agriculture, is increasing our export markets, and this bill will help us do it. The authorization is not required, in my opinion. Therefore, Mr. President, I shall urge my colleagues to vote against the amendment of the Senator from Pennsylvania and for the amendment of the Senator from Wisconsin.

Mr. HEINZ. Will the Senator from Colorado yield for a question?

Mr. ARMSTRONG. I am pleased to yield for unlimited purposes, Mr. President.

Mr. HEINZ. Mr. President, I know that the Senator from Colorado is an extremely vigilant man, but I have to point out to the Senator that this is the second shot he has had at this bill. He was a member of the committee last year, was a strong supporter of the bill in its entirety last year. He was a member of the committee; he did not object to this same provision, section 106 of the bill, last year.

He did not, as I recollect—if I am wrong, I am sure he will correct me—object to this section when it was $20 million per year, $100 million, last year. If he did, there was no vote or amendment offered, as I recollect.

Is my recollection correct?

Mr. ARMSTRONG. Mr. President, in response to the Senator I say that last year was last year; this year is this year.

One of the very last things that happened in the closing days of the last session of Congress was that I took the floor to oppose an increase of $38 million in the funding for Amtrak, a supplemental appropriation which was so unnecessary that even the Department of Transportation opposed the increase. Yet we could not muster the votes on the floor of the Senate to head off an increase of $38 million for that supplemental, which was so clearly unnecessary.

This year this body already has voted not only to rescind the $38 million in Amtrak but also to cut an additional $500 million out of that wasteful and extravagant program.

What I am saying is that the Amtrak vote and the Conrail vote and the $40 billion in budget cuts which have been approved by the Senate earlier this year show how different the political climate is this year from last.

Why did I not offer an amendment on this matter last year? Because you can only tilt at so many windmills at once. I did not think such an amendment would carry last year. This year I think it will.

This is a time for budgetary restraint, and I believe that the amendment which Senator PROXMIRE and I have offered is consistent with that restraint.

There is a time to start new programs. There is a time to create new ways to establish Federal programs and to spend Federal dollars. But clearly this year, and I would think for the next several years, is not a very likely or timely moment for that.

The Senator's recollection is correct, that I did not offer an amendment; but I do so now.

Mr. HEINZ. Mr. President, I happen to agree with the Senator entirely on the question of the budgetary priorities changing.

The reason I asked the question was not to draw him out on a question on which we are in substantial accord but to establish whether or not he thought that what he supported last year was welfare for exporting last year as opposed to welfare for exporting this year.

Mr. ARMSTRONG. Mr. President, let the record reflect that the Senator from Colorado, despite many misgivings, has supported welfare of different kinds on some occasions.

If last year I positioned myself as having supported a form of welfare which this year seems odious to me, I confess that inconsistency is not one of the hobgoblins of the mind of the Senator from Colorado.

Nonetheless, that the issue is clear. We should not crank this money into the budget.

I believe we are ready for a vote on this matter.

Mr. HEINZ. I thank the Senator for yielding.

Mr. ARMSTRONG. I thank the Senator for his courtesy in jogging my memory on this matter.

The PRESIDING OFFICER. The Chair thanks the Senator from California.

The Senator from Pennsylvania is recognized.

Mr. HEINZ. Mr. President, I ask unanimous consent that we temporarily lay aside for not to exceed 5 minutes the Proxmire amendment and the Heinz amendment to the Proxmire amendment for the purpose of allowing Senator MATHIAS to proceed.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 25

(Purpose: To establish an International Antitrust Task Force)

Mr. MATHIAS. Mr. President, I call up my amendment which is amendment No. 25, a printed amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS) proposes an amendment numbered 25.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 47, line 16, add the following title III:

SHORT TITLE

SEC. 301. This title may be cited as the "Commission on the International Application of the United States Antitrust Laws Act".

ESTABLISHMENT OF COMMISSION

SEC. 302. (a) There is established the Commission on the International Application of the United States Antitrust Laws (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of eighteen members who shall be appointed by the President as follows:

(1) four members from the executive branch of the Government:

(A) the Vice President of the United States;

(B) the Assistant Attorney General for the Antitrust Division;

(C) the Chairman of the Federal Trade Commission; and

(D) the Legal Advisor of the Department of State;

(2) four members from the Senate, two members to be named upon the recommendation of the majority leader, and two members to be named upon the recommendation of the minority leader;

(3) four members from the House of Representatives to be named upon the recommendation of the Speaker of the House of Representatives; and

(c) The Chairman of the Commission shall

(4) six members from the private sector, be the Vice President of the United States.

(d) The President shall designate the Assistant Attorney General for the Antitrust Division and the Legal Advisor of the Department of State as the Vice Chairmen of the Commission.

(e) The majority and minority leaders and the Speaker of the House shall make recommendations for the appointments to be made pusuant to subsection (b) within thirty days of the enactment of this Act.

(f) The President shall make all of the appointments in accordance with subsection (b) after receiving the recommendations set forth in paragraphs (2) and (3) of subsection (b), but such appointments shall be made no later than sixty days after the date of enactment.

(g) The first meeting of the Commission shall be called by the President within thirty days following the date such appointments to the Commission are made.

(h) Not more than one-half of the members of each class of members set forth in paragraphs (2), (3), and (4) of subsection (b) shall be from the same political party.

(i) The term of office for members shall be for the term of the Commission.

(j) A vacancy in the Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(k) Ten members of the Commission shall constitute a quorum (but a lesser number may hold meetings).

(l) The membership of the Commission shall be selected in such a manner as to be broadly representative of the various interests, needs, and concerns which may be affected by the international aspects of the United States antitrust laws.

PURPOSES OF THE COMMISSION

SEC. 303. (a) The Commission shall—

(1) conduct a comprehensive study of and make recommendations concerning the international aspects of the antitrust laws of the United States, the applicable rules of court, related statutes, administrative procedures, and their applications, their consequences, and their interpretation by the courts and Federal agencies (hereinafter referred to as "the United States antitrust laws"); and

(2) make periodic reports to the President snd to the Congress, concerning its activities and make a final report to the President and the Congress concerning such comprehensive study.

(b) Such comprehensive study shall specifically address—

(1) the application of the United States antitrust laws in foreign commerce, and their effect on—

(A) the ability of United States enterprises to compete effectively abroad; and

(B) the ability of United States enterprises to compete or deal effectively with foreign controlled enterprises in market and nonmarket economies;

(2) the effect of the application of the United States antitrust laws on United States relations with other countries;

(3) the jurisdiction and scope of the application of the antitrust laws to foreign conduct and foreign parties;

(4) the issue of reciprocity between nations with respect to mutual access to markets, equal opportunities for foreign investments, and enforcement of antitrust laws;

(5) the applications of United States rules of court relating to the enforcement of antitrust laws in the context of international transactions (for example, the "per se" and "rule of reason" doctrines);

(6) the application of the United States antitrust laws to joint ventures, mergers, acquisitions, and distributions and licensing arrangements between and among the United States and foreign based enterprises; and

(7) the proper scope and effect of the following on the application of the United States antitrust laws:

(A) the rules governing sovereign immunity;

(B) the defense of "foreign sovereign compulsion"; and

(C) the doctrine of comity.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 304. (a) Members of Congress, who are members of the Commission, shall serve without compensation in addition to that received for their services as Members of Congress, but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) Notwithstanding section 5533 of title 5, United States Code, any member of the Commission who is in the executive branch of the Government shall receive the compensation which he would receive if he were not a member of the Commission, plus such additional compensation, if any, as is necessary to make his aggregate salary not in excess of the highest rate for employees compensated at the rate of GS-18 of the General Schedule under section 5332 of title 5, United States Code, and he shall be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of the duties vested in the Commission.

(c) Members from the private sector shall each receive compensation not exceeding $200 per diem when engaged in the performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

POWERS OF THE COMMISSION

SEC. 305. (a)(1) The Commission or, on the authorization of the Commission, any subcommittee thereof, may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee may deem advisable. Subpenas may be issued to any person within the jurisdiction of the United States courts, under the signature of the Chairman or Vice Chairmen, or any duly designated member, and may be served by any person designated by the Chairman, the Vice Chairmen, or such member. In the case of the failure of any witness to comply with any subpena or to testify when summoned under authority of this section, the provisions of sections 102 through 104, inclusive, of the Revised Statutes (2 U.S.C. 192-194), shall apply to the Commission to the same extent as such provisions apply to Congress.

(2) For purposes of section 552(e) of title 5, United States Code, the Commission shall not be considered to be an agency.

(b) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairmen, such information as the Commission deems necessary to carry out its functions under this title.

(c) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services in accordance with the provisions of section 3109 of title 5, United States Code, but at rates not to exceed $200 per diem for individuals.

(d) The Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties to such extent and in such amount as are provided in appropriations Acts.

FINAL REPORT

SEC. 306. The Commission shall transmit to the President and to the Congress not later than one year after the first meeting of the Commission, a final report containing a detailed statement of the findings and conclusions of the Commission, including its recommendations for administrative, judicial, and legislative action which it deems advisable. Any formal recommendation made by the Commission to the President and to the Congress must have the majority vote of the Commission as present and voting.

EXPIRATION OF THE COMMISSION

SEC. 307. Sixty days after the submission to Congress of the final report provided for in section 6, the Commission shall cease to exist.

AUTHORIZATION OF APPROPRIATION

SEC. 308. There are hereby authorized to be appropriated such sums as may be necessary to carry out the activities of the Commission.

EFFECTIVE DATE

SEC. 309. The provisions of this title shall take effect upon the date of enactment of this title.

Mr. MATHIAS. Mr. President, I am a cosponsor of the Export Trading Company Act. I wish to do everything that I can do to make sure that it gets passed

and it gets signed into law at the earliest possible time.

If the United States is going to pay just for the energy we have to import in the next 19 years, to the end of this century, we will have to expand our exports tenfold.

So, there is urgency in getting this bill into law, getting it into action.

I have also proposed this amendment to establish a 12-month task force to study the larger impact our antitrust laws have on the ability of U.S. firms to compete overseas.

I am very happy that the distinguished Senator from Mississippi (Mr. COCHRAN) has joined me as a cosponsor of the amendment.

The export trading company bill addresses a very narrow but important aspect of the problem, and the task force proposed in this amendment would focus on the whole gamut of issues raised by the extraterritorial application of the U.S. antitrust laws.

I think very few of us question the importance of exports to the economic health of the country. Exports now contribute more to our gross national product than private corporate investment does. One out of every eight jobs in the country is involved in exports. One dollar out of every three of U.S. corporate profits comes from international activities. One out of every 3 acres of farmland produces for export.

Yet, despite the critical importance of exports to our economic well-being, the United States still lags far behind its major trading partners in international trade. The U.S. share of free world exports has steadily decreased, from 18.2 percent in 1960 to 12.1 percent in 1980. In Germany, France, Italy, and the United Kingdom exports account for more than 50 percent of all goods produced, while in the United States they account for only 14 percent.

Much of the blame for our poor export performance can be pinned on the maze of disincentives to trade which the Federal Government has built up over the years. Last winter, the President's Export Council came out flatly in favor of removing self-imposed disincentives to U.S. exports. The Council recommended recently that every effort be made to facilitate U.S. export efforts and overseas operations by freeing U.S. firms from unnecessary antitrust constraints and uncertainties. To help accomplish this, the Council specifically recommended the enactment of this international antitrust task force bill, the same proposal contained in this amendment.

The 12-month task force would enable us to examine those issues in a thorough and thoughtful way. It would report its findings to the President and to Congress on what changes, if any, should be made to promote the doctrine of competition worldwide. In addition to the President's Export Council, the bill had the support of the U.S. Chamber of Commerce and the National Association of Manufacturers. We held extensive Senate hearings and the bill attracted 19 cosponsors and passed the Senate without a dissenting vote. Unfortunately, in the press of business in the final days of the 96th Congress, the House of Representatives failed to act on the bill. On February 5, I reintroduced the bill and Representative MCCLORY has already introduced a companion bill in the House of Representatives.

I have discussed this proposal with the floor managers of the pending legislation, S. 734, and I believe that they generally support the establishment of an international antitrust task force.

As a matter of fact, one of the distinguished cosponsors of the bill last year was the Senator from Pennsylvania, the manager of the bill today, Mr. HEINZ.

So, I am hopeful that this legislation will pass not only in this Congress but this year.

The PRESIDING OFFICER. The Chair reminds the Senator his 5 minutes have expired.

Mr. HEINZ. Mr. President, I ask unanimous consent that the Senator be yielded 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Maryland is recognized for 3 additional minutes.

Mr. MATHIAS. Mr. President, I am well aware that for a variety of reasons the pending amendment has the potential of slowing down the forward progress of S. 734 in the other body, and I am reluctant to add any burdens that might slow down the progress of the bill that I not only support but which I think is urgently necessary.

So, if it is the judgment of the manager of the bill that this is the case, I would consider withdrawing the amendment.

Mr. HEINZ. Mr. President, will the Senator from Maryland yield?

Mr. MATHIAS. I am happy to yield to the Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I thank the Senator from Maryland for his excellent statement and for his excellent amendment.

I, in principle, can support his amendment, but I do believe that it is important to keep S. 734 as clean as possible so that we can keep the focus here today on export trading companies. We have so far been able to do so.

I assure my good friend from Maryland that with respect to his bill, S. 432, that he can count on my assistance in moving that bill ahead and as it is considered by his committee, the Judiciary Committee, I believe it is a good bill.

I believe that the task force he seeks to establish is extremely timely and important. As a matter of fact, I ask unanimous consent that at the appropriate time he add me as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS. Mr. President, I am very happy to add the Senator from Pennsylvania as a cosponsor of the bill.

His support and he will be critical to the early passage of it. I hope that it can be passed in the very near future.

I will see that his name is added as a cosponsor.

The bill is, of course, identical with this amendment. It still has, as it did last year, very widely expressed support, and I am confident it can be passed by the Senate in the normal course of business.

So I will accept the suggestion of the Senator from Pennsylania and at this time, Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. HEINZ. Mr. President, will the Senator yield further?

Mr. MATHIAS. Yes.

Mr. HEINZ. Mr. President, I express my gratitude to the Senator from Maryland and also note for the RECORD that he has been an exceptionally strong supporter of S. 734, our export trading company legislation.

He has been a great advocate of a strong export policy. He has been a great advocate of a strong economy, and it is due to his support and the support of many like-minded Senators that we have been able to bring S. 734 before the Senate at this relatively early date.

I thank the Senator from Maryland for his cooperation.

Mr. MATHIAS. Mr. President, I thank the Senator from Pennsylvania.

UP AMENDMENT NO. 62

Mr. ARMSTRONG. Mr. President, the pending business I believe is the Heinz amendment in the nature of a substitute to the Proxmire-Armstrong amendment.

The PRESIDING OFFICER. The Heinz amendment is the substitute for the language proposed to be stricken by an amendment of the Senators from Wisconsin and Colorado.

Mr. ARMSTRONG. Mr. President, I thank the Chair.

In a moment I am going to move to table the Heinz amendment.

Before I offer that motion I just wish to make two observations since I expect this shall be the last time I will speak during the course of the debate on the amendment or on the bill.

First of all, I want to again congratulate those who brought this bill to the floor because, in my opinion, both from the standpoint of the long-run future of the economy of this country and from the standpoint of getting our finances in shape, from a budgetary standpoint, the prestige and security interests of this country, and in every way, this is an important and worthy bill.

The objection which the Senator from Wisconsin and I have to funding is one which we have already explained. There is no need to put $50 million in authorization in this bill. The administration is against it, the Secretary is against it, OMB is against it, and I trust the Senate will be against it.

The parliamentary situation, to recap, is simply that Mr. PROXMIRE and I have offered an amendment to delete all of the $50 million in spending which is authorized in the bill.

The Senator from Pennsylvania (Mr. HEINZ) has offered a substitute which would set the level at $25 million.

In order to clarify the situation and to permit Senators to dispose of the Heinz amendment without voting against what appears to be a cut in the amount of the authorization, I do now move to table the Heinz amendment.

Mr. HEINZ. Mr. President, will the Senator withhold his motion for one moment?

Mr. ARMSTRONG. Surely.

Mr. HEINZ. I think we are at a point where we are going to be able to have some back-to-back votes. Hopefully there will be one vote on the motion to table and the motion to table will not succeed—that is my hope and expectation. We will then voice-vote everything else. The Heinz amendment will be adopted, and then we can proceed to final passage—at least that is my hope. But the key to it is, I think, we are very close to wrapping this up.

Before we do that, Mr. President——

Mr. ARMSTRONG. Mr. President, before the Senator moves on from that point, if the Senator will yield, I take it it would be his intention to have a voice vote whether the tabling motion carries or not.

My expectation is that the motion to table will carry. In short, what the Senator is saying is that if the vote on the tabling motion is conclusive, in effect, before taking the money out, you are going to be for leaving it in for at least $25 million if the vote is not to table.

Mr. HEINZ. I do not know if I can go that far, but obviously if the motion to table does not succeed, we will then voice-vote the Heinz amendment, and that voice vote would be presumably successful in view of the will of the Senate, and then we could voice-vote final passage.

Mr. ARMSTRONG. Is it not the Senator's intention if the tabling motion succeeds also to proceed to a voice vote on the Proxmire-Armstrong amendment?

Mr. HEINZ. That would be the Senator's intention. I cannot speak for other Members.

Mr. ARMSTRONG. There is no need for repetitive rollcalls.

The PRESIDING OFFICER. If the amendment offered by the Senator from Pennsylvania prevails, under the precedents of the Senate, the amendment of the Senator from Wisconsin is rendered moot and is not voted upon.

Mr. HEINZ. I think we all understand that.

Mr. President, before we return to the business at hand, I want to take a moment to express my appreciation for the work of the Senator from Illinois (Mr. DIXON). He has been an unswerving supporter of this bill throughout its path through the Senate. Unfortunately, Senator DIXON cannot be here today for the final vote on S. 734, but I think the RECORD should reflect not only his support for the bill but also for the good work he has done as a member of the committee to help keep the bill intact and keep it strong.

In doing so I might add he has been following in the footsteps of his predecessor, Senator Adlai Stevenson of Illinois, to whose seat he succeeded. Senator Stevenson, of course, is really the true father of the export trading company legislation before us.

If his work on this bill is any indication, Senator DIXON is a more than worthy successor to Senator Stevenson.

Mr. PROXMIRE. Mr. President, will the Senator from Colorado withhold his tabling motion for just a minute so that I can make clear what we are voting on?

Mr. ARMSTRONG. Mr. President, I am pleased to withhold my request.

Mr. PROXMIRE. Mr. President, of course, I fully congratulate the distinguished Senator from Colorado. I do think, however, that it is clear that the Heinz amendment, if it carries, will mean we will have $25 million, that there will be authorized $25 million of spending which is likely to follow that.

If the Heinz amendment is defeated, it is clear that we will not spend that $25 million. In fact, it should be overwhelmingly clear to everybody here that we will save $25 million.

There should be no confusion on this because, as I understand it, this is an amendment which, as the Chair properly said, will make the Armstrong-Proxmire amendment, which would knock out the entire $50 million and go to zero funding, make that amendment moot, invalid, knock it out of the box entirely.

So the issue before the Senate in voting for the Armstrong motion to table, those who want to save $25 million would vote "aye," in favor of tabling, and those who think there should be $25 million in the bill will vote "no."

Mr. ARMSTRONG. Mr. President, I think we are ready for the motion.

The PRESIDING OFFICER. Does the Senator make the motion to table?

Mr. ARMSTRONG. I do so move and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Colorado to table the amendment of the Senator from Pennsylvania.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER) and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Illinois (Mr. DIXON), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from Louisiana (Mr. LONG) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. BRADLEY) is absent on official business.

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 55, nays 38, as follows:

[Rollcall Vote No. 82 Leg.]

YEAS—55

Abdnor	DeConcini	Hatch
Armstrong	Denton	Hawkins
Baucus	Dole	Hayakawa
Bentsen	Domenici	Helms
Biden	Eagleton	Hollings
Boren	East	Humphrey
Boschwitz	Exon	Johnston
Bumpers	Ford	Kassebaum
Byrd, Harry F., Jr.	Glenn	Kasten
Chiles	Goldwater	Lugar
	Grassley	Mattingly
McClure	Proxmire	Stafford
Melcher	Pryor	Symms
Mitchell	Quayle	Thurmond
Moynihan	Roth	Tower
Murkowski	Rudman	Wallop
Nickles	Sasser	Warner
Nunn	Schmitt	Zorinsky
Percy	Simpson	

NAYS—38

Andrews	Gorton	Matsunaga
Baker	Hart	Metzenbaum
Burdick	Hatfield	Pell
Byrd, Robert C.	Heflin	Pressler
Cannon	Heinz	Randolph
Chafee	Inouye	Riegle
Cochran	Jackson	Sarbanes
Cohen	Jepsen	Specter
Cranston	Kennedy	Stennis
D'Amato	Laxalt	Stevens
Danforth	Leahy	Tsongas
Dodd	Levin	Weicker
Garn	Mathias	

NOT VOTING—7

Bradley	Packwood	Williams
Dixon	Huddleston	
Durenberger	Long	

So the motion to table UP amendment No. 62 was agreed to.

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which the motions to lay on the table was agreed to.

Mr. HEINZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, is the pending business now the Proxmire-Armstrong amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. ARMSTRONG. Mr. President, I suggest we move to a vote and have it by a voice vote.

Mr. METZENBAUM. Mr. President, I ask for the yeas and nays.

Mr. President, I withdraw that request.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado and the Senator from Wisconsin.

So the amendment (UP No. 61) was agreed to.

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HEINZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 63

(Purpose: To recognize the importance of agricultural exports)

Mr. PRESSLER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

Mr. HEINZ. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator is correct.

Will the Senate please be in order? Will Senators please take their seats?

The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. PRESSLER) proposes an unprinted amendment numbered 63.

Mr. PRESSLER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 25, between lines 18 and 19, insert the following:

"(6) agriculture constitutes the foundation of the economy of the United States and will continue to be a leading sector in U.S. export growth;" and renumber the remaining subsections accordingly.

Mr. PRESSLER. Mr. President, I shall not take very much time as I have worked out this amendment with both the minority and the majority leaders earlier today.

I felt it very appropriate that agriculture be included in the findings in this bill because it is such an important part of our exports. Indeed, agriculture is our leading export.

The purpose of having agriculture in the findings of the act is that for too long Washington has thought of international trade as being merely industrial products. The fact of the matter is that agriculture is our chief export but it gets very little help and agricultural products are often sold to other nations on a concessionary basis.

This means that farmers, small businessmen, and farming communities pay for part of our trade bill.

I want agriculture to be treated on an equal basis and this amendment is a step in this direction.

In the future, administrators and lawyers interpreting this act will be able to look at the language contained in my amendment as a basis to work more vigorously for farm exports.

Mr. President, this amendment recognizes the importance of agricultural exports to U.S. international trade. This point seems indisputable and I hope that the managers of the bill will be able to accept it as a useful addition to the Export Trading Companies Act.

This amendment simply adds wording to the findings section of the bill. The amendment reads: "agriculture constitutes the foundation of the economy of the United States and will continue to be a leading sector in U.S. export growth."

The United States exported $31.975 billion worth of agricultural products in 1979, and preliminary figures indicate that 1980 agricultural exports were valued at about $40 billion. One-third of American agricultural production is exported. The agricultural trade surplus is approaching $30 billion or more. These facts should be recognized in that section of this bill which recognizes the increasing importance of exports to the U.S. economy as a whole.

As I indicated in testimony to the Senate Agriculture Committee on March 23, 1981, my own State of South Dakota exports over 20 percent of its farm produce. The farmers and ranchers of South Dakota are interested in seeing that percentage increase.

With that, Mr. President, let me say again that I hope the managers of the bill will find this additional language to be an acceptable and worthwhile addition to the bill.

Mr. President, small agricultural businesses no less than small manufacturers would be more active in exporting their goods overseas if they possessed the technical knowledge and experience which are essential for successful operation in the complicated business of selling their goods in foreign markets.

Already, American agriculture is the greatest success story in U.S. international trade. The U.S. agricultural trade surplus of over $24 billion last year helped greatly to diminish the awesome cost of importing $93 billion worth of foreign oil. Our food and fiber exports are essential for world survival and will continue to be in great demand as the world experiences a near doubling of its population by the end of the 20th century.

Mr. President, the great success of U.S. agricultural production lies principally in the fact that most of the exportable production is controlled by small and medium sized owner-operators of American farmland. The United States and the world have a tremendous vested interest in insuring that these producers continue to battle the great odds they must face—unpredictable weather, an uncertain economy, and sometimes questionable Government policies—in order to guarantee the continual production of food and fiber.

While most food production is controlled by small producers, the foreign marketing of that food is controlled by a very small handful of companies. They have been very successful in the export business. It is time to offer agricultural businesses some encouragement to expand their marketing potential in the world market.

Mr. HEINZ. Mr. President, the Senator is entirely correct. We have examined the amendment. I think we can certainly accept it on this side.

Mr. PROXMIRE. Mr. President, I am delighted to accept it on this side.

Mr. President, I might add that I think we all owe tribute to the Senator from Pennsylvania, who has done a superb job in handling this bill in committee and on the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Dakota.

The amendment (UP No. 63) was agreed to.

Mr. HEINZ. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

● Mr. BENTSEN. Mr. President, we hear a great deal about America's problems in international trade. Year after year we run a balance of trade deficit of about $30 billion. There is general agreement that we "must do something" to remain competitive in vital world markets.

But despite this vocal and very legitimate preoccupation with our trade performance, the Congress has been unable to enact legislation that would strengthen our hand in the export area. Not one significant element of the omnibus trade bill drawn up by the export caucus last year has become law.

The export trading company legislation, currently under consideration by the Senate, is an excellent opportunity to begin the process of eliminating disincentives to American exports; this legislation, which was passed unanimously by the Senate last fall but floundered in the House, will make American business better able to meet the terms of competition in the quest for international markets.

As an original cosponsor of S. 734 and its predecessor in the last Congress, I am convinced this legislation can make an important contribution to America's trade performance in the decade of the eighties.

No one should pretend that S. 734, despite its obvious advantages, constitutes some magical solution to our trade problems. Before America can return to world economic leadership and compete successfully in the international marketplace, we must demonstrate that we can put our own economic house in order. It will take time, sacrifice, and discipline to achieve the sort of fundamental reforms required to restore a healthy, dynamic American economy characterized by stability and real growth. But we have begun the process and as we succeed our trade performance will inevitably improve.

The long-term nature of our economic problems should not, however, discourage us from taking steps that will have an immediate and favorable impact on our ability to export. The time has long since passed when American business and industry can accept unique, self-imposed restraints on our ability to market our products abroad.

We have seen that efficient export trading companies, able to provide a wide variety of services for their clients, have been an essential ingredient in the commercial success of nations like Japan that have emerged as consistent winners in the battle for exports.

Let us provide this advantage to our exporters. The provisions of S. 734 would encourage thousands of smaller and medium-size U.S. businesses—currently put off by the risk and complexity of exporting—to go after international markets. Trading companies of the type envisioned by this legislation will help spread out the risks of foreign trade and absorb currency fluctuations. They will help identify emerging market opportunities, assist in organizing joint construction projects abroad, and handle the logistics of foreign trade that presently deter so many potential exporters.

In addition, this legislation helps clarify many of the long-standing antitrust ambiguities that hinder the formation of American consortia to bid on significant export projects. Senator DANFORTH and I have long been interested in the effort to update the Webb-Pomerene Act and make it applicable to the export of services as well as goods. S. 734 accomplishes that objective. It also expands and clarifies the antitrust exemption for export trade associations and transfers administration of the act to the Department of Commerce.

It creates an office within Commerce to promote joint export activities and establishes a specific certification pro-

cedure that will eliminate the element of uncertainty in current law.

I am also enthusiastic, Mr. President, about the banking aspects of the Export Trading Company Act which permit the U.S. banking community to participate in export trading companies and provide the financial resources and expertise that have become such an essential ingredient in the success of our competitors. We have seen, time and again, that the ability to offer attractive credit terms to potential foreign buyers often means the difference between winning and losing sales.

While the United States has traditionally discouraged relationships between banks and trading companies, our competitors in trade have gone in the opposite direction and, with bank-owned trading companies, have frequently gained a competitive advantage over U.S. exporters. By permitting U.S. banks to acquire ownership in export trading companies under specified conditions and with appropriate safeguards, S. 734 would provide an important new asset in our drive to restore export competitiveness to the American economy.

For too long, Mr. President, this Nation has approached international trade as a luxury rather than a necessity.

Today success in the world of trade has become an indispensable ingredient in domestic prosperity. The United States has been slow to adjust and adapt to the changing environment of trade, and our share of world exports has decreased dramatically as a result.

I can see no good reason to continue to deny our exporters the support and assistance of full-fledged American export trading companies. Enactment of S. 734 will help even up the rules of the game and enable America to compete more effectively for world markets.●

● Mr. PERCY. Mr. President, I am an enthusiastic supporter of this legislation that will make a significant contribution to this country's export effort. I supported similar legislation last year, when the Senate passed a bill by a vote of 77 to 0, and I am a cosponsor of this year's legislation.

It is highly appropriate that this bill is one of the very first to come to a vote this year. We have had several measures on the floor that will move the President's domestic economic recovery legislation forward. This is the first major bill of this Congress that will advance our international economic position, and I commend Senator HEINZ and the Banking Committee for moving so expeditiously to bring this to a Senate vote.

Mr. President, our export performance over the past decade has been lackluster. Our merchandise trade has been seriously out of balance the past 4 years, with deficits of over $30 billion twice since 1977. The trade balance improved somewhat last year, but the Commerce Department still projects a preliminary 1980 trade deficit of over $26 billion. Moreover, these massive imbalances look even larger when compared with the relatively smaller deficits earlier in the 1970's. The 1976 trade deficit was a mere $9 billion. The previous year, 1975, we even scored a surplus of $9 billion. So massive trade deficits are not what we are accustomed to.

I am concerned not only that we seem to be losing our ability to finance our own imports but that we are also losing our global share of exports. In the last decade, the U.S. share of world markets declined from over 21 percent to 17.4 percent, the largest relative decline among major industrial exporters.

The goal of this legislation is to improve U.S. export performance by furthering the development of U.S. export trading companies. Only 10 percent of the 250,000 manufacturing firms in the U.S. export. The majority of these businesses are small and medium sized; many of them would export if they could cope with the risks and complexities of exporting. The Department of Commerce has estimated that up to 20,000 additional U.S. manufacturers and agricultural producers could export. It is in the Nation's best interests that these firms begin to market goods and services abroad. S. 734 will facilitate that movement of small businesses into the export field.

It comes as no surprise that more of these firms do not get involved in the export sector. The disincentives have simply been too strong.

Just this winter this matter was addressed by a distinguished panel of private citizens, the Japan-United States economic relations group. U.S. Ambassador Robert Ingersoll is the American chairman of the group, and Ambassador Nobuhiko Ushiba, former State Minister for External Economic Affairs, is his Japanese counterpart. An important part of their January 1981 report states:

> Solutions to the problems hindering further United States export growth are even more important in a global context than that of the bilateral imbalance. Even so, the Group believes one of the most important factors in the bilateral trade relationship is the management and performance of the United States economy, particularly government and industry policies toward exports. No change would improve the United States-Japan economic relationship more than an improvement in the fundamental strength of the United States economy. . . .
>
> In addition, United States exports to Japan and indeed to all the world are inhibited by a lack of United States business attention to foreign market opportunities and by government disincentives to exporting. Industrial exports account for a noticeably lower percentage of GNP in the United States than any other advanced industrial country. Much of American business has traditionally had little interest in foreign markets. The size and familiarity of the American domestic market, combined with ignorance about foreign markets, have deterred American firms from realizing important foreign market opportunities. In addition, a variety of United States laws and government policies tend to make exporting less attractive.

Mr. President, that is a candid assessment of the U.S. trade position and where remedial action should be directed. The Japan-United States economic relations group has pinpointed, in their excellent analysis, one of the primary reasons for our poor export record. This legislation before us today will move us off dead center and will begin to reverse those policies that tend to make exporting less attractive.

The Export Trading Company Act has a number of important provisions, but I would like to highlight just a few. Perhaps one of the most significant provisions is in title II of S. 734 where a new procedure is outlined for certification of export trade associations and export trading companies. Once an association or company has been certified, they can then apply for exemption from the antitrust laws for the purpose of marketing products abroad. One of the grievances that small- and medium-sized businesses have had over the years is the threat that if they joined with other firms to market products overseas, the Justice Department or Federal Trade Commission would view this as a broach of the antitrust laws. The result was a strong reluctance to export. This carefully-worded section granting antitrust immunity, limited in scope to what is specified in the certification, provides business with a much greater degree of certainty and should offer a major incentive for joint ventures in exporting.

Title I of the bill also contains important provisions relating to banks and their role in boosting our export performance. Under the provisions of S. 734, banks will be authorized to invest up to 5 percent of their capital in export trading companies. As much as $10 million can be invested in export trading companies by banks, so long as this investment does not make the trading company a subsidiary of the bank. To encourage these investments, the bill allows investments of this type to go forward without the approval of bank regulatory agencies. Of course, in cases where investments exceed $10 million, the appropriate regulatory bodies would be called on to review the investment. In cases where more than 50 percent of the stock of an export trading company would be purchased by a bank, regulatory agency approval is also required.

A third very important part of this bill is section 104 which directs the Secretary of Commerce to promote and encourage the formation and operation of export trading companies. On this type of outreach program could depend the whole success of the other key parts of the bill. Export trading companies of the magnitude envisioned by the legislation are a new aspect of the American economic landscape. Many smaller firms, as I mentioned earlier, have studiously avoided exporting. We need to get the word out to them that some of the disincentives have been reduced and others have been eliminated outright. As with all new endeavors, success of export trading companies will hinge on the success we have in communicating the new terms of the law.

Mr. President, I am greatly encouraged by the Senate's speedy consideration of this legislation. It is important for the entire country, but it will also have a marked impact on my own State of Illinois, which is already one of the premiere exporting States of the Nation. In agricultural exports, we have consistently ranked No. 1, with a wide range of agricultural products. Our top ex-

ports have been feed grains and soybeans. One of every two farming jobs rely on exports in my State and we have always sought new ways to market exports and we are always looking for new markets for our products.

In manufacturing, Illinois ranks second in the United States in exports. Machinery, food products, chemicals and transportation equipment are by far the most important manufactured exports, accounting for one of every nine jobs. Moreover, the manufacturing export sector is spread throughout the State and is not concentrated just in Chicago. In the Chicago economy, about 6 percent of the work force had jobs relating to exports, but in each of Decatur, Peoria, and Springfield, well over 20 percent of the work force jobs depend on exports.

In short, Mr. President, exporting is a way of life in my home State. We know the value of cultivating foreign markets and Illinois farmers, businessmen, and workers have traditionally given their support to expanding overseas opportunities. I know my fellow Illinoisans will welcome passage of this bill and the new export instruments it promises.●

● Mr. GLENN. Mr. President, I rise to speak in support of S. 734, a bill to encourage exports by facilitating the formation and operation of export trading companies. I cosponsored this legislation last year and the reasons for supporting it this year are even more compelling. The purpose of this bill is to improve U.S. export performance at a time when American companies are facing increasingly vigorous competition in the international marketplace. From every corner of the world, government planning and financing of foreign trade challenges the resources of American firms. To meet this challenge, American companies must organize the most efficient business operations possible and we in Government must do what we can to help American firms improve their competitive edge.

One way in which we can do this is by facilitating the formation of trading companies. The trading company is not a new idea. It is as old as commerce itself and has enjoyed great success in other countries. In Japan, for example, the top 10 trading organizations, the Sogo Shoshas, account for approximately 60 percent of Japan's imports and 50 percent of its exports. Trading companies have also played an important role in the economic growth of many European countries. Yet, despite their historical and international success, trading companies have not flourished in the United States.

There are several reasons—both economic and legal—for this failure. It is my contention that the economic conditions no longer prevail and that the legal restraints are equally outdated. First, we have been generally self-sufficient for the bulk of our economic needs throughout our Nation's history. Second, the industrial revolution occurred early in our history and its effects spread quickly. This made the acquisition and distribution of goods easy and further reduced our need for foreign trade. Third, the large size of our domestic market meant that American businessmen had ample growth opportunities close at hand and involving relatively small risk. These factors, all the products of our unique geographic and economic heritage, limited the attractiveness of and need for foreign trade companies. But these unique conditions no longer prevail. The interdependence and competitiveness of the world market make it impossible for the United States to sustain its economic growth while operating on outdated notions of resource self-sufficiency in limited domestic markets.

Unfortunately, Federal laws and regulations limit our ability to respond effectively to these new challenges. For example, Government regulations prevent U.S. banks from offering many important trading services. In addition, antitrust uncertainties deter many U.S. firms from cooperating with other U.S. producers in their organization of export activities. These restrictions are anachronisms. They hamper American firms at a time when foreign governments are cooperating with and, in many instances, even subsidizing and directng the export efforts of ther own firms. The result is that our unilateral export restrictions cost American businessmen opportunities abroad and cost American workers jobs at home.

S. 734 addresses many of these obstacles and facilitates the formation and operation of export trading companies. It does so by allowing banking organizations to play a significant role in the future success of American export trading companies. In the past, many small- and medium-sized firms found foreign markets difficult to penetrate and too costly to do business in. That is one of the reasons why the Commerce Department estimates that some 20,000 smaller U.S. firms who could profitably export presently do not. Bank participation will enhance opportunities for small- and medium-sized firms to enter world markets by giving them access to the capital, financing, and marketing capabilities heretofore possessed only by larger firms.

While the degree of future bank participation in export trading companies—as well as the forms that such participation may take—remain uncertain at present, section 105 of the bill sets certain limitations on the level of involvement permitted banking organizations that invest in or finance these companies. S. 734 allows banking organizations to invest up to $10 million in one or more export trading companies without prior regulatory agency approval, as long as that investment does not amount to control. Investments in excess of $10 million, or any investment or action which amounts to control of an export trading company, must be approved by the appropriate Federal banking agency. The bill sets an overall limit on a bank's involvement by prohibiting its direct and indirect investments in the ownership of one or more export trading companies from exceeding 5 percent of the bank's capital and surplus. Total investment by a banking organization, combined with extensions of credit to export trading companies, cannot exceed 10 percent of the bank's capital and surplus.

Some have argued that these restrictions do not go far enough; that banks should not be allowed to gain control of an export trading company, because that would represent a substantial departure from the long-established separation of banking and commerce in our economic system. They fear that the public's deposits may become exposed to undue risk if banks acquire ownership control of trading companies.

Legitimate questions concerning the scope of bank participation do merit careful consideration. It is time that banks, given their international offices, experience in trade financing and familiarity with domestic U.S. producers, will be likely sources of leadership in forming export trading companies. But I feel that S. 734 includes important safeguards which not only protect against unsound banking practices, but also against any unfair competitive advantages that might otherwise accrue to an export trading company having a bank investor.

A specific provision of the bill, for example, prohibits banks from extending credit on a preferential basis to an export trading company in which it has an equity interest. This subsection meets a traditional concern of U.S. policy that banks not favor their affiliates in loan transactions. But even without the inclusion of this provision, the Financial Institutions Regulatory and Interest Rate Control Act of 1978 already provides safeguards against such unfair lending practices by banking institutions. Similarly, the 5-percent limit placed on total equity investments, and the 10-percent limit placed on a bank's total investments in or financing of trading companies, protect banking organizations from overexposure.

I see no harm in allowing a bank to own a trading company as long as such limitations exist. In fact, permitting banks to have equity and management control over their affiliate relationships seems far wiser than mandating the bank capital be controlled solely by the decisions of nonbanking partners. Banking organizations will surely be more inclined to form export trading companies if they can control their investments. Such investments, in turn, will provide banks with a long-term incentive to establish the additional framework needed to offer a complete range of export services.

S. 734 also stipulates that any bank's proposed or existing investment in trading companies may be terminated by the appropriate Federal regulatory agency upon its determination that the ownership or control of any such investment constitutes a serious risk to the financial safety, soundness, or stability of that bank. I believe that these limitations, coupled with the banking agencies' broad regulatroy, supervisory, and examination powers and other existing legal restrictions, assure that there will be no serious risk to the safety and soundness of bank participation in export trading companies.

The access to capital and international

markets provided by title I of S. 734 is a necessary, but not a sufficient, step in facilitating the formation of American trading companies. It is not sufficient because American firms have long been unwilling to risk investments in export activities, given the uncertain climate created by domestic antitrust rulings. So unless we are willing to clarify how our antitrust laws related to export trade, we cannot hope to utilize the full resources of the American business community in our effort to regain a competitive position in international trade.

On this last point, our competitiveness has deteriorated precisely because we have failed to develop a foreign trade policy consistent with changing international realities. Whereas private, multinational firms seeking the most efficient production and distribution of goods and services once dominated world markets, economic nationalism now prevails. In the critical areas of oil, steel, and autos, Government owned or directed, vertically integrated corporations shape the flow of trade. They do so as instruments of national governments and their actions are directed by political, rather than economic, consideration.

The postwar challenge America issued to her trading partners was not met by a purely American response. Industrial development programs in Italy, France, Great Britain, Japan, and the developing nations are hybrids of the American model and their implementation has altered the evolution of world trade. Although I do not advocate the adoption of these nationalistic, economic policies here in the United States, neither do I believe we can shape a coherent, effective foreign economic policy without recognizing the unsettling effects of those policies on world trade and American industries.

Through the Marshall Plan and other development assistance programs, the United States helped Europe, Japan and the developing nations establish their industrial strength. We generously stood back while they nurtured their industries with financial assistance and protectionism. While we continue to provide the shelter of our defense umbrella, they continue along the path of independence and economic nationalism. It is time now to adjust our own policies to the new realities of the global market.

One way in which we can do this is by unleashing the full force of America's private enterprise from the restraints of needless and confusing regulation. I believe that this bill's clarification of long-standing ambiguities in the area of antitrust exemptions for export trading companies is a long overdue step in this direction. Title II of S. 734 encourages the formation of export trading companies by expanding the provisions of the Webb-Pomerene Act to include trade in services, as well as that in good, wares or merchandise. This feature will greatly expand export opportunities for trading companies in areas where American companies are especially competitive. Furthermore, title II establishes a clearance procedure whereby firms can determine in advance whether their export activities are immune from antitrust suits. By establishing a certification procedure and codifying the enforcement intentions of our Government's antitrust oversight branches, title II of S. 734 eliminates some of the uncertainties in current law that have discouraged the formation of American consortia to bid on significant export projects. At the same time, however, S. 734 also protects against any anticompetitive effects that might result from the establishment and operation of export trading companies.

Mr. President, this bill will not, by itself, solve America's foreign trade problems. Restoring the international competitiveness of the American enterprise will require us to do much more in the areas of capital formation, regulatory reform and research and development. But because S. 734 recognizes that cooperation between business and Government is a critical ingredient in any comprehensive national effort to improve our export performance, I believe it is an important step in the right direction.●

● Mr. DODD. Mr. President, I rise in support of S. 734, the Export Trading Company Act. It is clear that increased export activity must constitute a major component of any economic recovery program. This legislation will facilitate access to foreign markets by many businesses, particularly smaller businesses, who, because of inadequate capital or marketing expertise, have not enjoyed such access.

Last year, the White House Commission on Small Business pointed out that small businesses produce, investment dollar for investment dollar, 24 times as many innovations as big business, and create over 85 percent of new jobs nationwide. In today's global economy, increasingly dominated by sophisticated, innovative, high-technology goods and services, it should be clear that smaller businesses should be in the forefront of American attempts to more effectively penetrate world markets. Smaller businesses can thus augment activities by larger businesses, which have for some time exported computers, heavy machinery, chemicals, aerospace technology, power-generating machinery, and telecommunications equipment and services.

During the recent past, fewer than 1 out of 10 U.S. manufacturing firms export, and the major share of the export market is dominated by large corporations. S. 734, if enacted, would promote the establishment of export trading companies and thus would overcome some of the most basic, yet significant, obstacles to exporting by small business.

Under title I, export trading companies would benefit from increased financial leverage provided through Federal loans and loan guarantees. The Secretary of Commerce would provide information about export trading companies to export-minded U.S. businesses. And banks would be permitted to invest in export trading companies under strict limitations designed to insure the safety and soundness of participating banks. Bank investments of over $10 million would be subject to prior approval of Federal regulatory agencies and bank investments exceeding 5 percent of bank capital would be prohibited outright.

Uncertainty over constraints posed by antitrust laws has been a significant factor inhibiting the formation of export trading companies. Title II of this legislation would clarify antitrust provisions of the 1918 Webb-Pomerene Act and provide procedures through which specified export trade activities would be granted antitrust clearance by the Department of Commerce. To eliminate confusion regarding the status of present Webb-Pomerene associations, this bill "grandfathers" such existing associations so they can continue operations unimpeded and free of uncertainty under this act.

Export trading companies would help smaller businesses pool the costs and risks associated with participation in foreign markets. Services provided by export trading companies might include market research, transportation, warehousing, and aftersales servicing, as well as trade financing. One can look to Japan for an example of the success of trading companies. Japanese trading companies account for over 50 percent of that country's total trade, which involves thousands of products worldwide.

Even though there are many differences between Japanese and American business policies which preclude point-by-point emulation, it still seems clear that great potential exists in a close relationship between trading companies and U.S. manufacturers which produce new and innovative products.

Mr. President, the state of our economy and of our Nation demands that we take strong action to improve our competitiveness in world markets. We must take steps to improve productivity and reduce inflation here at home. However, even if we perform adequately in this regard, we will still face intense and growing competition from foreign industry, much of which enjoys the benefits offered by trading companies, as well as active government support in the form of generous subsidies and credit. This legislation will provide a significant additional step toward enhancing the ability of our businesses to compete, on similar terms, with aggressive industries abroad. Therefore, I urge the Senate today to act favorably on this legislation, as it did last year by a vote of 77 to 0.●

ADVANCING OUR GROWTH OBJECTIVES IN WORLD MARKETS

● Mr. BRADLEY. Mr. President, the Senate recently completed work on a reconciliation resolution to reduce drastically Federal spending levels for fiscal year 1981 and spending targets for fiscal years 1982 and 1983. The cuts, many of which will bore deeply into important social programs, were justified by a desire to restore growth to the private sector of the economy. They were made on the expectation that reducing the Federal presence in the economy will make room for more rapid economic expansion in the private sector and that this growth in turn ultimately will provide more benefits to all Americans.

Mr. President, although I differ with the President on spending priorities and have serious doubts about the economic theory underlying his revival program, I wholeheartedly agree that restoring

robust economic growth must be an American priority. But for us to win the battle for growth it must take place on two fronts—restoring confidence and investment levels within our economy domestically and advancing our position in markets internationally.

The budget, and fiscal policy generally, primarily is a force on the domestic economy. Export trading companies, the subject of the legislation before us today, are a potential force to advance our growth objectives in the international economy.

Mr. President, the world has changed and influences on the U.S. economy have changed. Trade activity is no longer marginal. Rather it is the most dynamic element. Twenty years ago exports and imports combined amounted to some 10 percent of U.S. gross national product. Today the combined figure is close to 25 percent.

During the coming years, much of the stimulus to U.S. growth will have to come from foreign demand, particularly from the developing world. Even under the rosiest assumptions about domestic economic growth rate, we are not likely to keep pace with the developing world, and certainly not with newly industrializing countries—the Taiwans, Brazils, and South Koreas of the world. While during the seventies the older industrialized nations of the world grew at an average 3.4 percent, the developing world on a whole clipped along at a pace of 5.7 percent, and the newly industrialized countries boasted even higher average growth rates.

Of course, these growth rates in the developing world as a whole were on a much lower base and the distribution of growth was very uneven, with some of the poorest countries experiencing negative rates. But past statistics and future projections point to development activity outside our borders as the dynamic factor in world economic expansion. Developing markets have become increasingly important for U.S. expansion and will certainly become even more important in the future. Just last year, countries of the developing world took nearly 40 percent of U.S. exports, more than was taken by the European community and Japan combined.

Trade has become a major influence in U.S. economic life, but we have done little as a nation to improve our trade performance, little to reap the full benefits of trade. Our trade competitors in Western Europe and Japan have not been so negligent.

They have made trade a centerpiece of their growth strategies, stressing the long-term returns of gaining a foothold in new and developing markets. Their government officials have been energetic export promoters in foreign lands. Their official export credit agencies have made export financing and insurance available on generous terms and for a broad range of purposes, and their laws and policies have encouraged, not discouraged, the coordination of business and financial activities for exporting purposes.

Export trading companies particularly have made a major contribution to Japan's trade performance. We are all fully aware of how impressive that performance has been. Export trading companies account for over 50 percent of total trade by Japan today.

Mr. President, S. 734 offers our Nation an opportunity to mobilize for trade, to strengthen our areas of comparative advantage and to take advantage of the widening opportunities in the world.

Mr. President, the future of our economy depends on our success in world markets—the stake is no less critical than that. The Government can seek to reduce barriers to competitive performance by U.S. companies, but ultimately the fate of the U.S. economy lies with the private sector.

The Export Trading Companies Act is a measure that relies on private sector initiative. It does not ask Government to take over a business function. It removes barriers that impede U.S. business from mobilizing to function more effectively.

It is particularly suited to mobilize the untapped resources of small business in America. Only some 10 percent of the 250,000 to 300,000 manufacturing firms in the United States do any exporting. Some 75 percent of these 250,000 to 300,000 firms are small- or medium-sized businesses, but firms of this size account for only 10 to 15 percent of U.S. exports. Indeed 85 percent of all exports are sold by a mere 1,000 to 2,000 firms and about 100 firms account for 50 percent of exports. Most of these are large firms. The Department of Commerce estimates that an additional 20,000 firms who do not export at all could do so.

Small businesses are beginning to see over the horizon of our borders to the wealth of growth opportunity abroad. But the view is still murky, and therefore uninviting.

For small businesses, the uncertainties of export transactions can preclude investment in exporting. It simply is too risky to invest time and money in acquiring market information, locating potential buyers, and arranging for financing warehousing, insurance, transportation, and distribution, even though the final returns may well prove worth it. It does not serve anyone's interest to permit potential profitable business to stagnate for lack of information and centralized services.

The export trading companies bill offers a way out of this stagnation. It is such a sensible approach that one is astonished that it has not been enacted to date.

The bill is designed to promote exports by encouraging the formation of export trading companies or associations. Its major achievement is to permit these trading groups to offer a range of export services including banking services, at "one-stop".

By permitting the participation of banks in such companies, the legislation helps potential exporters overcome two of the greatest barriers to export—obtaining information and business contacts in world markets and obtaining adequate capital. Banks can bring to trading companies resources that are essential to their success, including expertise in international transactions, such as currency exchange and letters of credit, international bank and correspondent banks relationships, knowledge of potential customers, experience in managing investment risk decisions, and capital to start up a trading company and finance its transactions.

The integrity of our Nation's banking system is duly protected by an array of conditions placed on the terms of bank participation. For example, the appropriate banking agency must approve bank investments in trading companies in excess of $10 million and investments that give a bank control of or more than 50 percent of the assets of a trading company. Further, the agency can disapprove or place conditions on bank investment or activity in a trading company, and participating banks are barred from offering preferential terms to affiliated trading companies.

A second major achievement of this bill is the creation of a certification process that reduces the uncertainty of potential participants in export trading associations as to the liability of such companies to antitrust prosecution. Unpredictable antitrust liability has been a cloud over the formation of trading companies, despite the explicit exemption under a 1918 law of export promoting activities, under certain conditions, from U.S. antitrust laws.

Since 1918 it has been U.S. policy to exclude from antitrust prosecution export-promoting activities that do not restrain trade in the U.S. market. But this has not been U.S. practice. This is because business cannot know in advance whether courts will construe certain cooperative activities as exempt from antitrust prosecution under the 1918 law. This uncertainty has a chilling effect on potential participants in an export trading association.

The export trading companies bill creates a certification process that balances the exporter's need for a more productable legal environment against society's interest in a competitive U.S. economy. The certification process enables trading companies to organize effectively for export promotion without undermining the purposes of the Sherman and Clayton Acts.

Essentially, trading companies can obtain prior assurance against antitrust prosecution by presenting the Department of Commerce with an application detailing its proposed activities. Commerce then consults with the Department of Justice and the Federal Trade Commission to determine whether these activities will promote exports and not result in a substantial lessening of competition, or in the use of unfair methods of competition against other U.S. exporters. A positive determination would exempt the applicant from antitrust prosecution for only those activities specified in the application.

Safeguards assure that the exemption will not impair competition in U.S. markets or extend beyond the bounds of the certifications as approved. For example, the Department of Justice or the FTC can seek injunctive relief to prevent certification from taking effect, and can initiate decertification of a trading company in Federal court.

Mr. President, the export trading companies bill has been the subject of close and careful scrutiny. It has been examined piecemeal in numerous congressional hearings, undergone review by two administrations and been the subject of vigorous Senate debate. It ultimately has won support in all these forums.

Mr. President, the refined product of all these labors is before us today. It is the product of expertise, balance, deliberation, and healthy compromise. It is a worthy product, and I am proud, as one of its early supporters, to urge its enactment.●

● Mr. WEICKER. Mr. President, I rise in support of S. 734, the Export Trading Company Act of 1981. As a cosponsor of this legislation and its predecessor in the 96th Congress, I am particularly supportive of the role this legislation will play in increasing exports by small- and medium-sized firms.

Mr. President, small businesses which desire to export are often stymied by the tremendously burdensome requirements of such an effort. Gaining an expertise in foreign markets, tax provisions, freight handling, and business customs requires an indepth study and is tremendously time consuming. A small business cannot afford the large in-house international marketing staff which would be required to handle all aspects of a successful export effort.

Heretofore, Government export promotion programs have not been successful in filling this informational gap or in providing the type or level of assistance necessary to aid small business exporters. Export associations and trading companies currently in existence, while providing an alternative to direct exporting by small business, have been harvesting by certain legal restrictions and ambiguities.

S. 734 seeks to address many of these problems which have restricted successful operation of export trading companies and associations and in so doing, increase exporting by small- and medium-sized businesses.

Of course, Mr. President, a major problem facing small business is access to capital. This problem is even more acute when a small business attempts to export. By providing, under carefully monitored circumstances, for bank ownership of export trading companies, this legislation seeks to address this critical capital problem.

Mr. President, the White House Conference on Small Business, held in January 1980, examined the area of small business involvement in international trade. The conference endorsed five recommendations to improve the atmosphere necessary for successful exporting by small business. The recommendation receiving the broadest support included an endorsement of the development of export trading companies with greater powers and authority. This Congress has repeatedly expressed its support for the recommendations of the White House Conference on Small Business. Passage of the pending measure will be one more step toward fulfillment of the conference agenda.

Mr. President, I urge my colleagues to support this important legislation.●

Mr. CHAFEE. Mr. President, the purpose of the bill before us today is to promote the formation of export trading companies and trade associations. I totally support that goal. This bill, S. 144, directs the Secretary of Commerce to promote export trading companies by providing information and advice to individuals and by bringing together the producers of goods and services with firms experienced in export trade. It permits banks to make limited investment in export trading companies. It also clarifies the antitrust provisions applicable to export trade associations and trading companies and provides a certification procedure that will enable them to obtain antitrust preclearance for their export trade operations.

When I look at my home State, I see that 90 percent of Rhode Island's companies are small. If Rhode Island is going to increase jobs and stimulate the economy through exporting, then small companies must participate.

Having sponsored an export opportunities conference for firms in Rhode Island, I learned that many companies do not export because they have neither the funds to invest in market development overseas, nor the time or personnel to master customs documents, shipping, packaging, regulations on sales agents, and the many details involved in selling goods and services overseas. Such companies need far more than a 1-day conference, or a Government brochure. They need someone to market their products for them; a way to spread the risks and costs among many firms, which they cannot afford on an individual basis.

At present, four small- or medium-sized firms in Rhode Island belong to joint export associations. But the difficulty in securing adequate financing, and uncertainty over antitrust exemptions has prevented these trading companies from reaching more than a small fraction of U.S. firms which could export. In addition, the banks in Rhode Island are small to medium sized. There are no Chase Manhattans in Rhode Island. I have talked with companies who belong to joint export associations which are operating under current law. I have talked with Rhode Island bankers. They would like the opportunity to work together to promote Rhode Island exports. The legislation before us today would give them that chance.

Mr. President, every other major trading nation not only permits but encourages the formation of export trading companies or their equivalent. Only the United States has failed to allow the development of this vehicle for aiding smaller firms who either cannot or will not enter the world marketplace on their own.

I have heard a good deal of talk lately about the trading power of the Japanese and our need to compete with them more effectively. Two-thirds of Japanese exports are handled by trading companies. In the U.S., experts believe that less than 10 percent of our exports make use of joint marketing methods. How can we expect U.S. firms to compete when we deny them what has been the most effective weapon in the Japanese trade arsenal? As Senator HEINZ has pointed out, the sixth largest U.S. exporter is Mitsui, a Japanese trading company.

We must recognize the reality of what we face ahead in the world trade arena. There is increasing competition for slices of the world trade pie. Yet, world trade volume has leveled off considerably, increasing by only 1 percent in 1980. The share of manufactured goods exported by the industrialized nations is only two-thirds of what it was 20 years ago.

In as much as the markets of the industrialized world are relatively mature, the greatest potential for growth lies in the less developed countries. But, these nations have the least developed commercial channels. Trying to enter their markets can be a complex and frustrating experience, particularly for smaller companies trying to export on their own. If U.S. companies are going to share in the growth of these markets, thus increasing exports, creating jobs, and strengthening our economy, then they must have the tools provided in the legislation before us today.

Finally, Mr. President, I would like to point out that we are not asking the Government to give anything to U.S. companies. We are only asking that it not hinder U.S. companies' ability to compete overseas. The administration has urged the Congress to pass this legislation quickly. The time has come to do just that.

The PRESIDING OFFICER. The bill is open to further amendment.

If there be no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered.

Mr. BAKER. Mr. President, before the rollcall begins, there will be no more rollcall votes today.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER) and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. DURENBERGER) would vote "Yea."

Mr. CRANSTON. I announce that the Senator from Illinois (Mr. DIXON), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from Louisiana (Mr. LONG) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. BRADLEY) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 83 Leg.]

YEAS—93

Abdnor	Glenn	Moynihan
Andrews	Goldwater	Murkowski
Armstrong	Gorton	Nickles
Baker	Grassley	Nunn
Baucus	Hart	Pell
Bentsen	Hatch	Percy
Biden	Hatfield	Pressler
Boren	Hawkins	Proxmire
Boschwitz	Hayakawa	Pryor
Bumpers	Heflin	Quayle
Burdick	Heinz	Randolph
Byrd, Harry F., Jr.	Helms	Riegle
Byrd, Robert C.	Hollings	Roth
Cannon	Humphrey	Rudman
Chafee	Inouye	Sarbanes
Chiles	Jackson	Sasser
Cochran	Jepsen	Schmitt
Cohen	Johnston	Simpson
Cranston	Kassebaum	Specter
D'Amato	Kasten	Stafford
Danforth	Kennedy	Stennis
DeConcini	Laxalt	Stevens
Denton	Leahy	Symms
Dodd	Levin	Thurmond
Dole	Lugar	Tower
Domenici	Mathias	Tsongas
Eagleton	Matsunaga	Wallop
East	Mattingly	Warner
Exon	McClure	Weicker
Ford	Melcher	Zorinsky
Garn	Metzenbaum	
	Mitchell	

NOT VOTING—7

Bradley	Huddleston	Williams
Dixon	Long	
Durenberger	Packwood	

So the bill (S. 734), as amended, was passed as follows:

S. 734

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXPORT TRADING COMPANIES

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1981".

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

(2) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

(4) export trade intermediaries, such as trading companies, can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per-unit cost to producers;

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant portion of potential United States exporters);

(6) State and local government activities which initiate, facilitate, or expand export of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(7) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations; and

(8) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services, particularly by small, medium-size, and minority concerns, by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods produced in the United States or services produced in the United States, and exported, or in the course of being exported, from the United States to any foreign nation;

(2) the term "goods produced in the United States" means tangible property manufactured, produced, grown, or extracted in the United States, the cost of the imported raw materials and components thereof shall not exceed 50 per centum of the sales price;

(3) the term "services produced in the United States" includes, but is not limited to, accounting amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services, not less than 50 per centum of the sales or billings of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(5) the term "export trading company" means a company, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for the purposes of—

(A) exporting goods or services produced in the United States; and

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(7) the term "Secretary" means the Secretary of Commerce; and

(8) the term "company" means any corporation, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization.

(b) The Secretary is authorized, by regulation, to further define such terms consistent with this section.

FUNCTIONS OF THE SECRETARY OF COMMERCE

SEC. 104. The Secretary shall promote and encourage the formation and operation of export trading companies by providing information and advice to interested persons and by facilitating contact between producers of exportable goods and services and firms offering export trade services.

OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS, BANK HOLDING COMPANIES, AND INTERNATIONAL BANKING CORPORATIONS

SEC. 105. (a) For the purpose of this section—

(1) the term "banking organization" means any State bank, national bank, Federal savings bank, bankers' bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(2) the term "State bank" means any bank or bankers' bank which is incorporated under the laws of any State, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands;

(3) the term "State member bank" means any State bank which is a member of the Federal Reserve System;

(4) the term "State nonmember insured bank" means any State bank which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(5) the term "bankers' bank" means any bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks (except to the extent directors' qualifying shares are required by law) and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors, or employees;

(6) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(7) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(8) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(9) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank or any bank located in the District of Columbia;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank; and

(D) the Federal Home Loan Bank Board with respect to a Federal savings bank.

In any situation where the banking organization holding or making an investment in an export trading company is a subsidiary of another banking organization which is subject to the jurisdiction of another agency, and some form of agency approval or notification is required, such approval or notification need only be obtained from or made to, as the case may be, the appropriate Federal banking agency for the banking organization making or holding the investment in the export trading company;

(10) the term "capital and surplus" shall be defined by the appropriate Federal banking agency;

(11) an "affiliate" of a banking organization has the same meaning as an "affiliate" of a member bank under section 2 of the Banking Act of 1933, and, with respect to a bank holding company, includes any bank or other subsidiary of such company, the term "subsidiary" has the same meaning as in section 2 of the Bank Holding Company Act of 1956;

(12) the terms "control" and "subsidiary" shall have the same meanings assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms "controlled" and "controlling" shall be construed consistenly with the term "control" as

vided in section 2(a)(2) of the Bank Holding Company Act of 1956, except that for purpose of the Export Trading Company Act of 1981, the determination of control as provided in section 2(a)(2) of the Bank Holding Company Act of 1956 shall be made by the appropriate Federal banking agency; and

(13) for the purposes of this section, the term "export trading company" means a company which does business under the laws of the United States or any State and which is exclusively engaged in activities related to international trade, whether operated for profit or as a nonprofit organization: *Provided, however,* That any such company must also either meet the definition of export trading company in section 103(a)(5) of this Act, or be organized and operated principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this Act: *Provided further,* That any such company, for purposes of this section, (A) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that its banking organization investor may do so under applicable Federal and State banking law and regulations, and (B) may not engage in manufacturing or agricultural production *activities.*

(b)(1) Notwithstanding any prohibition, restriction, limitation, condition, or requirement of any law applicable only to banking organizations, a banking organization, subject to the limitations of subsection (c) and *the procedures of this subsection,* may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case *of an Edge Act* Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency, if such investment does not cause an export trading company to become a subsidiary of the investing banking organization; and

(B) make investments in excess of an aggregate amount of $10,000,000 in one or more export trading companies, or make any investment or take any other action which causes an export trading company to become a subsidiary of the investing banking organization or which will cause more than 50 per centum of the voting stock of an export trading company to be owned or controlled by banking organizations, only with the prior approval of the appropriate Federal banking agency.

Any banking organization which makes an investment under authority of clause (A) of the preceding sentence shall promptly notify the appropriate Federal banking agency of such investment and shall file such reports on such investment as such agency may require. If, after receipt of any such notification, the appropriate Federal banking agency determines that export trading company is a subsidiary of the investing banking organization, it shall have authority to disapprove the investment or impose conditions on such investment under authority of subsection (d). In furtherance of such authority, the apropropriate Federal banking agency, after notice and opportunity for hearing, may require divestiture of any voting stock or other evidences of ownership previously acquired, and may impose conditions necessary for the termination of any controlling relationship.

(2) If a banking organization proposes to make any investment or engage in any activity included within the following two subparagraphs, it must give the appropriate Federal banking agency ninety days prior written notice before it makes such investment or engages in such activity.

(A) any additional investment in an export trading company subsidiary; or

(B) the engagement by any export trading company subsidiary in any line of activity, including specifically the taking of title to goods, wares, merchandise, or commodities, if such activity was not disclosed in any prior application for approval.

During the notification period provided under this paragraph, the appropriate Federal banking agency may, by written notice, disapprove the proposed investment or activity or impose conditions on such investment or activity under authority of subsection (d). An additional investment or activity covered by this paragraph may be made or engaged in, as the case may be, prior to the expiration of the notification period if the appropriate Federal banking agency issues written notice of its intent not to disapprove.

(3) In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1)(B) of this subsection within a period of one hundred and twenty days, which period begins on the date the application has been accepted for processing by the appropriate Federal banking agency, the application shall be deemed to have been granted. In the event of the failure of the appropriate Federal banking agency either to disapprove or to impose conditions on any investment or activity subject to the prior notification requirements of paragraph (2) of this subsection within the ninety-day period provided therein, such period beginning on the date the notification has been received by the appropriate Federal banking agency, such investment or activity may be made or engaged in, as the case may be, any time after the expiration of such period.

(c) The following limitations apply to export trading companies and the investments in such companies by banking organizations:

(1) The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership except where a majority of the outstanding voting stock or other evidences of ownership of the company is owned or controlled by such banking organization.

(2) The total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of credit by the banking organization and its direct and indirect subsidiaries to such export trading company shall not exceed 10 per centum of the banking organization's capital and surplus.

(3) A banking organization that owns any voting stock or other evidences of ownership of an export trading company may be required, by the appropriate Federal banking agency, to terminate its ownership or shall be subject to limitations or conditions which may be imposed by such agency, if the agency determines that the company has taken positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of its business operations.

(4) No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(d)(1) In the case of every application under subsection (b)(1)(B) of this section, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns (with special emphasis on small, medium-size, and minority concerns), and to improving United States competitiveness in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under subsection (b)(1)(B) if it finds that the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(2) In approving any application submitted under subsection (b)(1)(B), the appropriate Federal banking agency may impose such conditions which, under the circumstances of such case, it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices. With respect to the taking of title to goods, wares, merchandise, or commodities by any export trading company subsidiary of a banking organization, the appropriate Federal banking agencies may, by order, regulation, or guidelines, establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. In particular, the appropriate Federal banking agencies may establish inventory-to-capital ratios, based on the capital of the export trading company subsidiary, for those circumstances in which the export trading company subsidiary may bear a market risk on inventory held.

(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal banking agency must give due consideration to the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company, and the identity, character, and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions or set standards for the taking of title which unnecessarily disadvantage, restrict, or limit export trading companies in competing in world markets or in achieving the purposes of section 102 of this Act. In particular, in setting standards for the taking of title under the preceding paragraph (2), the appropriate Federal banking agencies shall give special weight to the need to take title in certain kinds of trade transactions, such as international barter transactions.

(4) Notwithstanding any other provision of this Act, the appropriate Federal banking agency may, whenever it has reasonable cause to believe that the ownership or control of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the banking organization, after due notice and opportunity for hearing, to terminate (within one hundred and twenty days or such longer period as the appropriate Federal banking agency may direct in unusual circumstances) its investment in the export trading company.

(5) On or before two years after enactment of this Act, the appropriate Federal

banking agencies shall jointly report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives their recommendations with respect to the implementation of this section, their recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-size, and minority business concerns, and their recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

(6) The appropriate Federal banking agency may, by regulation or order, exempt from the collateral requirements of section 23A of the Federal Reserve Act any loan or extension of credit made by a national or State bank to an export trading company affiliate if the agency determines such exemption is necessary to finance the operating expenses of an affiliated export trading company and does not expose the bank to undue financial risks. This paragraph does not apply to bank affiliates currently exempt from the requirements of section 23A.

(e)(1) Any party aggrieved by an order of an appropriate Federal banking agency under this section may obtain a review of such order in the United States court of appeals within any circuit wherein such organization has its principal place of business, or in the court of appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the order was based. The court shall set aside any order found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (D) without observance of procedure required by law.

(2) Except for violations of subsection (b)(3) of this section, the court shall remand for further consideration by the appropriate Federal banking agency any order set aside solely for procedural errors and may remand for further consideration by the appropriate Federal banking agency any order set aside for substantive errors. Upon remand, the appropriate Federal banking agency shall have no more than sixty days from date of issuance of the court's order to cure any procedural error or reconsider its prior order. If the agency fails to act within this period, the application or other matter subject to review shall be deemed to have been granted as a matter of law.

(f)(1) The appropriate Federal banking agencies are authorized and empowered to issue such rules, regulations, and orders, to require such reports, to delegate such functions, and to conduct such examinations of subsidiary export trading companies, as each of them may deem necessary in order to perform their respective duties and functions under this section and to administer and carry out the provisions and purposes of this section and prevent evasions thereof.

(2) In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this section may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency defined in that Act.

(g) Nothing in this section shall at any time prevent any State from adopting a law prohibiting banks chartered under the laws of such State from investing in export trading companies or applying conditions, limitations, or restrictions on investments by banks chartered under the laws of such State in export trading companies in addition to any conditions, limitations, or restrictions provided under this section.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 106. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other private creditors to export trading companies as defined in section 103(5) of this Act, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

TITLE II—EXPORT TRADE ASSOCIATIONS

SHORT TITLE

SEC. 201. This title may be cited as the "Export Trade Association Act of 1981".

FINDINGS; DECLARATION OF PURPOSE

SEC. 202. (a) FINDINGS.—The Congress finds and declares that—

(1) the exports of the American economy are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating $1 out of every $7 of total United States goods produced;

(2) exports will play an even larger role in the United States economy in the future in the face of severe competition from foreign government-owned and subsidized commercial entities;

(3) between 1968 and 1977 the United States share of total world exports fell from 19 per centum to 13 per centum;

(4) trade deficits contribute to the decline of the dollar on international currency markets, fueling inflation at home;

(5) service-related industries are vital to the well-being of the American economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and represent a small but rapidly rising percentage of United States international trade;

(6) agriculture constitutes the foundation of the economy of the United States and will continue to be a leading sector in United States export growth;

(7) small- and medium-sized firms are prime beneficiaries of joint exporting, through pooling of technical expertise, help in achieving economies of scale, and assistance in competing effectively in foreign markets; and

(8) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports.

(b) PURPOSE.—It is the purpose of this title to encourage American exports by directing the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

DEFINITIONS

SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

"SECTION 1. DEFINITIONS.

As used in this Act—

"(1) EXPORT TRADE.—The term 'export trade' means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported from the United States or any territory thereof to any foreign nation.

(2) SERVICE.—The term 'service' means intangible economic output, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, informational and any other data-based services, and communication services.

"(3) EXPORT TRADE ACTIVITIES.—The term 'export trade activities' means activities or agreements in the course of export trade.

"(4) METHODS OF OPERATION.—The term 'methods of operation' means the methods by which an association or export trading company conducts or proposes to conduct export trade.

"(5) TRADE WITHIN THE UNITED STATES.—The term 'trade within the United States' whenever used in this Act means trade or commerce among the several States or in any territory of the United States, or in the District of Columbia, or between any such territory and another, or between any such territory or territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"(6) ASSOCIATION.—The term 'association' means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations, whether operated for profit or organized as nonprofit corporations, which are created under and exist pursuant to the laws of any State or of the United States.

"(7) EXPORT TRADING COMPANY.—The term 'export trading company' means an export trading company as defined in section 103(5) of the Export Trading Company Act of 1981.

"(8) ANTITRUST LAWS.—The term 'antitrust laws' means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12), sections 5 and 6 of the Federal Trade Commission Act (15 U.S.C. 45, 46), and any State antitrust or unfair competition law.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(10) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(11) COMMISSION.—The term 'Commission' means the Federal Trade Commission.".

ANTITRUST EXEMPTION

SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out section 2 (15 U.S.C. 62) and inserting in lieu thereof the following:

"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

"(a) ELIGIBILITY.—The export trade, export trade activities, and methods of operation of any association, entered into for the sole purpose of engaging in export trade, and engaged in or proposed to be engaged in such export trade, and the export trade, export trade activities and methods of operation of any export trading company, that—

"(1) serve to preserve or promote export trade;

"(2) result in neither a substantial lessen-

ing of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association or export trading company;

"(3) do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(4) do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(5) do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members; and

"(6) do not constitute trade or commerce in the licensing of patents, technology, trademarks, or know-how, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or export trading company or its members

shall, when certified according to the procedures set forth in this Act, be eligible for the exemption provided in subsection (b).

"(b) EXEMPTION.—An association or an export trading company and its members are exempt from the operation of the antitrust laws with respect to their export trade, export trade activities and methods of operation that are specified in a certificate issued according to the procedures set forth in this Act, carried out in conformity with the provisions, terms, and conditions prescribed in such certificate and engaged in during the period in which such certificate is in effect. The subsequent revocation in whole or in part of such certificate shall not render an association or its members or an export trading company or its members, liable under the antitrust laws for such export trade, export trade activities, or methods of operation engaged in during such period.

"(c) DISAGREEMENT OF ATTORNEY GENERAL OR COMMISSION.—Whenever, pursuant to section 4(b)(1) of this Act, the Attorney General or the Commission has formally advised the Secretary of disagreement with his determination to issue a proposed certificate, and the Secretary has nonetheless issued such proposed certificate or an amended certificate, the exemption provided by this section shall not be effective until thirty days after the issuance of such certificate.".

AMENDMENT OF SECTION 3

SEC. 205. The Webb-Pomerene Act (15 U.S.C. 61–68) is amended—

(1) by inserting immediately before section 3 (15 U.S.C. 63) the following:

"SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCIATIONS PERMITTED.",

and

(2) by striking out "SEC. 3. That nothing" in section 3 and inserting in lieu thereof "Nothing".

ADMINISTRATION; ENFORCEMENT; REPORTS

SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act (15 U.S.C. 61–68) is amended by striking out sections 4 and 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the following sections:

"SEC. 4. CERTIFICATION.

"(a) PROCEDURE FOR APPLICATION.—Any association or export trading company seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

"(1) The name of the association or export trading company.

"(2) The location of all of the offices or places of business of the association or export trading company in the United States and abroad.

"(3) The names and addresses of all of the officers, stockholders, and members of the association or export trading company.

"(4) A copy of the certificate or articles of incorporation and bylaws, if the association or export trading company is a corporation; or a copy of the articles, partnership, joint venture, or other agreement or contract under which the association or export trading company conducts or proposes to conduct its export trade activities, or contract of association, if the association or export trading company is unincorporated.

"(5) A description of the goods, wares, merchandise, or services which the association or export trading company or their members export or propose to export.

"(6) A description of the domestic and international conditions, circumstances, and factors which show that the association or export trading company and its activities will serve a specified need in promoting the export trade of the described goods, wares, merchandise, or services.

"(7) The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods, wares, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

"(8) The names of all countries where export trade in the described goods, wares, merchandise, or services is conducted or proposed to be conducted by or through the association or export trading company.

"(9) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association or export trading company; the relation of the association or export trading company to other associations, corporations, partnerships, and individuals; and competition or potential competition, and effects of the association or export trading company thereon. The Secretary may request such information as part of an initial application or as a necessary supplement thereto. The Secretary may not request information under this paragraph which is not reasonably available to the person making application or which is not necessary for certification of the prospective association or export trading company.

"(b) ISSUANCE OF CERTIFICATE.—

"(1) NINETY-DAY PERIOD.—The Secretary shall issue a certificate to an association or export trading company within ninety days after receiving the application for certification or necessary supplement thereto if the Secretary, after consultation with the Attorney General and Commission, determines that the association and, its export trade, export trade activities and methods of operation, or export trading company, and its export trade, export trade activities and methods of operation meet the requirements of section 2 of this Act and will serve a specified need in promoting the export trade of the goods, wares, merchandise, or services described in the application for certification. The certificate shall specify the permissible export trade, export trade activities and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary deems necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that he proposes to issue. The Attorney General or Commission may, within fifteen days thereafter, give written notice to the Secretary of an intent to offer advice on the determination. The Attorney General or Commission may, after giving such written notice and within forty-five days of the time the Secretary has delivered a copy of a proposed certificate, formally advise the Secretary and the petitioning association or export trading company of disagreement with the Secretary's determination. The Secretary shall not issue any certificate prior to the expiration of such forty-five-day period unless he has (A) received no notice of intent to offer advice by the Attorney General or the Commission within fifteen days after delivering a copy of a proposed certificate, or (B) received any noticed formal advice of disagreement or written confirmation that no formal disagreement will be transmitted from the Attorney General and the Commission. After the forty-five-day period or, if no notice of intent to offer advice has been given, after the fifteen-day period, the Secretary shall either issue the proposed certificate, issue an amended certificate, or deny the application. Upon agreement of the applicant, the Secretary may delay taking action for not more than thirty additional days after the forty-five-day period. Before offering advice on a proposed certification, the Attorney General and Commission shall consult in an effort to avoid, wherever possible, having both agencies offer advice on any application.

"(2) EXPEDITED CERTIFICATION.—In those instances where the temporary nature of the export trade activities, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of the association or export trading company which have a significant impact on its export trade, make the ninety-day period for application approval described in paragraph (1) of this subsection, or an amended application approval as provided in subsection (c) of this section, impractical for the association or export trading company seeking certification, such association or export trading company may request and may receive expedited action on its application for certification.

"(3) AUTOMATIC CERTIFICATION FOR EXISTING ASSOCIATIONS.—Any association registered with the Federal Trade Commission under this Act as of January 19, 1981, may file with the Secretary an application for automatic certification of any export trade, export trade activities, and methods of operation in which it was engaged prior to enactment of the Export Trade Association Act of 1981. Any such application must be filed within one hundred and eighty days after the date of enactment of such Act and shall be acted upon by the Secretary in accordance with the procedures provided by this section. The Secretary shall issue to the association a certificate specifying the permissible export trade, export trade activities, and methods of operation that he determines are shown by the application (including any necessary supplement thereto), on its face, to be eligible for certification under this Act, and including any terms and conditions the Secretary deems necessary to comply with the requirements of section 2(a) of this Act, unless the Secretary possesses information clearly indicating that the requirements of section 2(a) are not met.

"(4) APPEAL OF DETERMINATION.—If the Secretary determines not to issue a certificate to an association or export trading company which has submitted an application for certification, or for an amendment of a certificate, then he shall—

"(A) notify the association or export trading company of his determination and the reasons for his determination, and

"(B) upon request made by the association or export trading company, afford it an opportunity for reconsideration with respect to that determination.

"(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF CERTIFICATE.—Whenever there is a material change in the membership, export trade activities, or methods of operation, of an association or export trading company then it shall report such change to the Secretary and may apply to the Secretary for an amendment of its certificate. Any application for an amendment to a certificate shall set forth the requested amendment of the certificate and the reasons for the requested amendment. Any request for the amendment of a certificate shall be treated in the same manner as an original application for a certificate.

"(d) AMENDMENT OR REVOCATION OF CERTIFICATE BY SECRETARY.—

"(1) The Secretary on his own initiative shall, upon a determination that the export trade, export trade activities or methods of operation of an association or export trading company no longer comply with the requirements of section 2 of this Act, revoke its certificate or make such amendments as may be necessary to comply with the requirements of such section.

"(2) Prior to revoking or amending a certificate, the Secretary shall—

"(A) notify the holder of the certificate in writing of the facts or conduct which may warrant the action, and

"(B) provide the holder of the certificate an opportunity for such hearing as may be appropriate in the circumstances.

"(3) Before revoking or amending a certificate pursuant to this subsection the Secretary may in his discretion provide the holder of the certificate an opportunity to achieve compliance within a reasonable period of time not to exceed ninety days, except that nothing in this paragraph shall affect any action under section 4(e) of this Act.

"(e) ACTION FOR REVOCATION OF CERTIFICATE BY ATTORNEY GENERAL OR COMMISSION.—

"(1) The Attorney General or the Commission may bring an action against an association or export trading company or its members to invalidate, in whole or in part, its certificate on the ground that the export trade, export trade activities or methods of operation of the association or export trading company fail or have failed to meet the requirements of section 2 of this Act. Except in the case of an action brought during the period before an antitrust exemption becomes effective, as provided for in section 2(c), the Attorney General or Commission shall notify any association or export trading company or member thereof, against which it intends to bring an action for revocation, thirty days in advance, as to its intent to file an action under this subsection. The district court shall consider any issues presented in any such action de novo and if it finds that the requirements of section 2 are not met, it shall issue an order revoking the certificate or any other order necessary to effectuate the purposes of this Act and the requirements of section 2.

"(2) Any action brought under this subsection shall be considered an action described in section 1337 of title 28, United States Code. Pending any such action which was brought during the period any exemption is held in abeyance pursuant to section 2(c) of this Act, the court may make such temporary restraining order or prohibition as shall be deemed just in the premises.

"(3) No person other than the Attorney General or Commission shall have standing to bring an action against an association or export trading company or their respective members for failure of the association or export trading company or their respective export trade, export trade activities or methods of operation to meet the eligibility requirements of section 2 of this Act.

"(f) COMPLIANCE WITH OTHER LAWS.—Each association and each export trading company and any subsidiary thereof shall comply with United States export control laws pertaining to the export or transshipment of any goods on the Commodity Control List to controlled countries. Such laws shall be complied with before actual shipment.

"(g) JUDICIAL REVIEW.—Final orders of the Secretary under this section shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code.

"SEC. 5. GUIDELINES.

"(a) INITIAL PROPOSED GUIDELINES.—Within ninety days after the enactment of the Export Trade Association Act of 1981, the Secretary, after consultation with the Attorney General, and the Commission shall publish proposed guidelines for purposes of determining whether export trade, export trade activities and methods of operation of an association or export trading company will meet the requirements of section 2 of this Act.

"(b) PUBLIC COMMENT PERIOD.—Following publication of the proposed guidelines, and any proposed revision of guidelines, interested parties shall have thirty days to comment on the proposed guidelines. The Secretary shall review the comments and, after consultation with the Attorney General, and Commission, publish final guidelines within thirty days after the last day on which comments may be made under the preceding sentence.

"(c) PERIODIC REVISION.—After publication of the final guidelines, the Secretary shall periodically review the guidelines and, after consultation with the Attorney General, and the Commission, propose revisions as needed.

"(d) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—The promulgation of guidelines under this section shall not be considered rulemaking for purposes of subchapter II of chapter 5 of title 5, United States Code, and section 553 of such title shall not apply to their promulgation.

"SEC. 6. ANNUAL REPORTS.

"Every certified association or export trading company shall submit to the Secretary an annual report, in such form and at such time as he may require, which report updates where necessary the information described by section 4(a) of this Act.

"SEC. 7. CONFIDENTIALITY OF APPLICATION AND ANNUAL REPORT INFORMATION.

"(a) GENERAL RULE.—Portions of applications made under section 4, including amendments to such applications, and annual reports made under section 6 that contain trade secrets or confidential business or financial information, the disclosure of which would harm the competitive position of the person submitting such information shall be confidential, and, except as authorized by this section, no officer or employee or former officer or employee, of the United States shall disclose any such confidential information, obtained by him in any manner in connection with his service as such an officer or employee.

"(b) DISCLOSURE TO ATTORNEY GENERAL OR COMMISSION.—Whenever the Secretary believes that an applicant may be eligible for a certificate, or has issued a certificate to an association or export trading company, he shall promptly make available all materials filed by the applicant, association or export trading company, including applications and supplements thereto, reports of material changes, applications for amendments and annual reports, and information derived therefrom, to the Attorney General or Commission, or any employee or officer thereof, for official use in connection with an investigation or judicial or administrative proceeding under this Act or the antitrust laws to which the United States or the Commission is or may be a party. Such information may only be disclosed by the Secretary upon a prior certification that the information will be maintained in confidence and will only be used for such official law enforcement purposes.

"SEC. 8. MODIFICATION OF ASSOCIATION TO COMPLY WITH UNITED STATES OBLIGATIONS.

"At such time as the United States undertakes binding international obligations by treaty or statute, to the extent that the operations of any export trade association or export trading company, certified under this Act, are inconsistent with such international obligations, the Secretary may require the association or export trading company to modify its respective operations, and in so doing afford the association or export trading company a reasonable opportunity to comply therewith, so as to be consistent with such international obligations.

"SEC. 9. REGULATIONS.

"The Secretary, after consultation with the Attorney General and the Commission, shall promulgate such rules and regulations as may be necessary to carry out the purposes of this Act

"SEC. 10. TASK FORCE STUDY.

"Seven years after the date of enactment of the Export Trade Association Act of 1981, the President shall appoint, by and with the advice and consent of the Senate, a task force to examine the effect of the operation of this Act on domestic competition and on United States international trade and to recommend either continuation, revision, or termination of the Webb-Pomerene Act The task force shall have one year to conduct its study and to make its recommendations to the President.".

(b) REDESIGNATION OF SECTION 6.—The Act is amended—

(1) by striking out "SEC. 6." in section 6 (15 U.S.C. 66), and

(2) by inserting immediately before such section the following:

"SEC. 11. SHORT TITLE.".

EFFECTIVE DATE WITH REGARD TO EXISTING ASSOCIATIONS

SEC. 207. (a) GENERAL RULE.—The amendments to the Webb-Pomerene Act set forth in sections 203, 204, 205, and 206 of this Act shall become effective with regard to an existing association described in subsection (b) only at such time as the association may elect to be certified pursuant to subsection (c).

(b) ELECTION TO CONTINUE UNDER PRIOR LAW.—Application of the antitrust laws to any association which as of January 1, 1981, had filed with the Commission the information specified under section 5 of the Webb-Pomerene Act as in effect immediately prior to the date of enactment of this Act shall continue to be governed by the standards set forth in that Act, unless such association elects to seek certification under subsection (c).

(c) ELECTION TO APPLY FOR CERTIFICATION.—Any association to which subsection (b) applies may, at any time after the effective date of this Act, file an application for certification with the Secretary containing the information set forth in section 4(a) of the Webb-Pomerene Act, as amended by section 208 of this Act. The Secretary shall consider and act upon such application in the manner provided in section 4(b) of the Webb-Pomerene Act, as amended by section 206 of this Act. The association filing an application pursuant to this subsection shall continue to be subject to subsection (b) of this section until the Secretary issues a certificate and such certificate has been accepted by the association; the association must decide whether or not to accept such certificate no later than thirty days after the Secretary's determination with respect thereto has become final.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER FOR RECESS UNTIL 9:30 A.M. TOMORROW

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. Thursday, April 9, 1981.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ROUTINE MORNING BUSINESS TOMORROW

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate reconvenes tomorrow and following the time allocated to the two leaders under the standing order, there be a period for the transaction of routine morning business, not to exceed 1 hour, with Senators permitted to speak for not more than 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS FROM TOMORROW MORNING UNTIL FRIDAY, APRIL 10, AND FOR ADJOURNMENT FROM FRIDAY UNTIL MONDAY, APRIL 27, 1981

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate completes its business on tomorrow, it stand in recess until 9:30 a.m. on Friday, April 10; that when the Senate recesses on Friday, it stand in adjournment until 12 noon on Monday, April 27, 1981, pursuant to Senate Concurrent Resolution 17.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, is it anticipated that Friday's session will be pro forma only?

Mr. STEVENS. That is the understanding, that Friday's session will be pro forma only. Tomorrow, there will be routine business.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. STEVENS. I am happy to yield.

Mr ROBERT C. BYRD. On tomorrow, will the Senate transact any business or will the session be for the purpose of routine type morning business?

Mr. STEVENS. The Senate will have routine morning business and, subject to normal clearance, will deal with some routine unanimous-consent matters. It is not anticipated that we will take up any controversial matters tomorrow.

Mr. ROBERT C. BYRD. Mr. President, there will be just the introduction of bills, resolutions, speeches, and so forth?

Mr. STEVENS. I do have a unanimous-consent request that the RECORD be left open for bills and reports, but that is my understanding. I do not know whether there will be any other items that might be cleared on the Executive Calendar or come off the regular calendar on the consent basis, but it will be totally on a unanimous-consent basis. Any transaction of such business will be confined to tomorrow and will not be done on Friday.

Mr. ROBERT C. BYRD. Any transaction of such business will be confined to tomorrow and will not be done on Friday?

Mr. STEVENS. There is no intention to conduct any business on Friday except to have the pro forma session in the morning at 9:30.

Mr. ROBERT C. BYRD. I thank the distinguished assistant majority leader.

ORDER FOR RECORD TO BE HELD OPEN ON THURSDAY, APRIL 9 AND FRIDAY, APRIL 10, 1981

Mr. STEVENS. Mr. President, I ask unanimous consent that on Thursday, April 9 and Friday, April 10 the RECORD be open for bills, resolutions, and inserts from 9 a.m. until 3 p.m. and that committees may be authorized to file reports from 9 a.m. until 3 p.m on Thursday and Friday

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER AUTHORIZING THE SECRETARY OF THE SENATE TO RECEIVE MESSAGES DURING ADJOURNMENT

Mr. STEVENS. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until April 27, 1981, the Secretary of the Senate be authorized to receive messages from the President of the United States and the House of Representatives and that they be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER AUTHORIZING THE PRESIDENT OF THE SENATE, THE PRESIDENT PRO TEMPORE, OR THE ACTING PRESIDENT PRO TEMPORE TO SIGN DULY ENROLLED BILLS AND JOINT RESOLUTIONS

Mr. STEVENS. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until April 27, 1981, the President of the Senate, the President pro tempore, or the Acting President pro tempore be authorized to sign duly enrolled bills and joint resolutions.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER AUTHORIZING THE SECRETARY OF THE SENATE TO RECEIVE REPORTS DURING ADJOURNMENT

Mr. STEVENS. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until April 27, 1981, on Thursday, April 16, 1981, and Thursday, April 23, 1981, the Secretary of the Senate be authorized to receive reports from 9 a.m. until 3 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE SENATE TO TAKE CERTAIN ACTION AND FOR RECOGNITION OF CERTAIN SENATORS ON MONDAY, APRIL 27, 1981

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate reconvenes on Monday, April 27, 1981, the reading of the Journal be dispensed with; no resolution come over under the rule; the call of the Calendar be dispensed with; and that following the recognition of the two leaders under the standing order, Mr. BAKER, Mr. STEVENS, Mr. ROBERT C. BYRD, and Mr. CRANSTON be recognized for not to exceed 15 minutes each, upon the conclusion of which, there be a period for the transaction of routine morning business, not to exceed 1 hour with Senators permitted to speak therein for not more than 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE RECOGNITION OF SENATOR HEFLIN ON TOMORROW

Mr. STEVENS. Mr. President, I ask unanimous consent that Senator HEFLIN be granted a 15-minute special order tomorrow following the time set aside under the standing order for the leaders

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate go into executive session to consider all nominations on the Executive Calendar with the exception of the nomination under the ACTION agency and the nomination of John B. Crowell under the Department of Agriculture.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I shall not object, I simply want to be sure that I understood the distinguished acting majority leader correctly.

He is excluding from consideration at this time Mr. John B. Crowell of Oregon to be Assistant Secretary of Agriculture and Mr. Thomas W. Pauken of Texas to be Director of the ACTION agency. Am I correct?

Mr. STEVENS. That is the Senator's understanding.

Mr. ROBERT C. BYRD. I have no objection.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nominations will be stated.

DEPARTMENT OF AGRICULTURE

The legislative clerk read the nomination of Seeley Lodwick, of Iowa, to be Under Secretary of Agriculture for International Affairs and Commodity Programs.

try to balance the budget at their expense.

I urge my colleagues to vote for the passage of this legislation.●

● Mr. ROBERTS of South Dakota. Mr. Speaker, I rise in support of H.R. 6782, the Disability Compensation and Survivors' Benefits for Veterans Amendments of 1982.

Traditionally, Congress has increased veterans' compensation rates whenever there has been an appreciable increase in the cost of living index. H.R. 6782 authorizes a 7.4 percent cost of living adjustment in the rates of compensation for disabled veterans and for the survivors of deceased veterans.

It is the duty of this Congress, and future Congresses, to remember and honor those who have offered their lives for the defense of their country. I join the committee in supporting this COLA for veterans compensation. The President has recommended this increase, the committee has endorsed this increase, and all the Members of this body should support this COLA.

The contracting out of services by Veterans' Administration facilities has been an issue of much controversy. Last year this Congress passed veterans legislation that included a provision to prevent the VA from contracting out. Again, this year, H.R. 6782 prohibits the VA from contracting out medical services unless it determines that the service cannot be provided in-house or that contracting for the service will enhance the quality of medical care provided by the facility.

We must not jeopardize the quality of care offered to our veterans. H.R. 6782 assures the veterans using VA facilities that only the best care available will be provided.

H.R. 6782 provides for many other areas of care for and service to the veteran. It permits members of the Senior Reserve Officers Training Corps to become eligible for disability compensation if an injury or disease is incurred while in training. H.R. 6782 corrects some inequities in the compensation received by blinded veterans, reinstates the $300 non-service-connected burial allowance for veterans who die in a contract nursing home, or have an insufficient estate to cover the cost of burial.

H.R. 6782 is needed to preserve our commitment to veterans. I urge my colleagues to support H.R. 6782.●

Mr. MONTGOMERY. Mr. Speaker, I have no further requests for time on this side of the aisle, and I yield back the balance of my time.

Mr. HAMMERSCHMIDT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. All time has expired.

The question is on the motion offered by the gentleman from Mississippi (Mr. MONTGOMERY) that the House suspend the rules and pass the bill, H.R. 6782, as amended.

The question was taken.

Mr. HAMMERSCHMIDT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE PRIVILEGED REPORT

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight to file a privileged report on a bill making supplemental appropriations for the fiscal year ending September 30, 1982, and for other purposes.

Mr. PURSELL reserved all points of order on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

EXPORT TRADING COMPANY ACT OF 1981

Mr. BINGHAM. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1799) entitled "The Export Trading Company Act of 1981," as amended.

The Clerk read as follows:

H.R. 1799

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as "The Export Trading Company Act of 1982".

FINDINGS; DECLARATION OF PURPOSE

SEC. 2. (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 percent of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(6) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(7) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(8) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(9) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(10) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by encouraging investment in export trading companies by certain banking institutions, and by modifying the application of the antitrust laws to certain export trade.

DEFINITIONS

SEC. 3. For purposes of this section and sections 2 and 4 of this Act—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services;

(3) the term "export trade services" includes international market research, advertising, marketing, insurance, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means any person, corporation, partnership, association, or similar organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services producing in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "export trade association" means an association engaged solely in export trade which is exempt from the antitrust laws under the Webb-Pomerene Act;

(6) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 4. The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers and exportable goods and services and firms offering export trade services.

TITLE I—EXPORT TRADING COMPANIES

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 101. (a) Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has been approved by the Board, except that such investments, whether direct or indirect, in such shares shall not exceed 5 percent of the bank holding company's consolidated capital and surplus. No approval may be granted by the Board under this paragraph unless the Board has taken into consideration the financial and managerial resources, competitive situation, and future prospects of the bank holding company and the export trading company involved and has imposed such restrictions, by regulation or otherwise, as the Board deems necessary to prevent conflicts of interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair competition. Notwithstanding any other provision of law, in any case in which a bank holding company invests in an export trading company, such bank holding company shall be deemed to be a member bank, with respect to such export trading company, for purposes of section 23A of the Federal Reserve Act, and such export trading company shall be deemed to be an affiliate for purposes of such section, except that amounts invested pursuant to the first sentence of this paragraph shall not apply with respect to the limitations imposed under section 23A of the Federal Reserve Act. For purposes of this paragraph, the term 'export trading company' means a company which does business under the laws of the United States or any State and which is organized and operated principally for purposes of exporting goods or services produced in the United States or which facilitates the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. For purposes of this paragraph, the term bank 'export trading services' includes consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States. For purposes of this paragraph, an export trading company (A) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that its bank holding company investor may do so under applicable Federal and State banking law and regulations, and (B) may not engage in manufacturing or agricultural production activities. The name of the export trading company involved shall not be similar in any respect to the name of the bank holding company which owns any of its voting stock or other evidences of ownership.".

(b) Section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.) is amended—

(1) in the first paragraph of subsection (c), by inserting "(1)" after "(c)"; and

(2) by inserting after the first paragraph of subsection (c) the following:

"(2)(A) Notwithstanding any other provision of law, with the approval of the Board of Governors of the Federal Reserve System, a corporation organized under this section may purchase and hold stock or other certificates of ownership in any other corporation which is an export trading company. No approval may be granted by the Board under this paragraph unless the Board has taken into consideration the financial and managerial resources, competitive situation, and future prospects of the corporations involved and has imposed such restrictions, by regulation or otherwise, as the Board deems necessary to prevent conflicts of interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair competition. No corporation organized under this section shall invest in such export trading companies in an amount in excess of 25 percent of its own capital and surplus. The second proviso of paragraph (1) shall apply to any corporation referred to in this paragraph.

"(B) Notwithstanding any other provision of law, in any case in which a corporation organized under this section purchases or holds stock or other certificates of ownership in any other corporation which is an export trading company, such acquiring corporation, or any bank or banking institution which purchases or holds stock or other certificates of ownership in such acquiring corporation, shall be deemed to be a member bank, with respect to such export trading company, for purposes of section 23A of this Act, and such export trading company shall be deemed to be an affiliate for purposes of such section, except that amounts invested pursuant to subparagraph (A) shall not apply with respect to the limitations imposed under section 23A of this Act.

"(C) For purposes of this section—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State and which is organized and operated principally for purposes of exporting goods or services produced in the United States or which facilitates the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services; and

"(ii) the term 'export trade services' includes consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States.

"(D) For purposes of this subsection, an export trading company—

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that the corporation which is organized under this section and which invests in the company defined in this clause may do so under applicable Federal and State banking law and regulations; and

"(ii) may not engage in manufacturing or agricultural production activities.

"(E) The name of the export trading company involved shall not be similar in any respect to the name of the corporation organized under this section which owns any of its voting stock or other evidences of ownership.".

TITLE II—EXPORT TRADE CERTIFICATES OF REVIEW

EXPORT TRADE PROMOTION DUTIES OF ATTORNEY GENERAL

SEC. 201. To promote and encourage export trade, the Attorney General may issue certificates of review. The Secretary of Commerce, in carrying out his responsibilities to promote the export of goods and services of the United States, may advise and assist persons with respect to applying for certificates of review.

APPLICATION FOR ISSUANCE OF CERTIFICATE OF REVIEW

SEC. 202. (a) To request the issuance of a certificate of review, a person shall submit to the Secretary of Commerce or the Attorney General a written application which—

(1) specifies conduct limited to export trade, and

(2) is in form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule issued under section 211.

Each application received by the Secretary of Commerce shall be forwarded, not later than 7 days after receipt, to the Attorney General.

(b)(1) With respect to each application submitted under subsection (a), the Attorney General shall publish in the Federal register notice that a certificate of review has been requested, the identity of each person requesting the certificate, and a description of the conduct with respect to which the certificate is requested. The notice shall be so published promptly, but not later than 10 days, after the application is received by the Attorney General.

(2) The Attorney General may not issue the certificate until the expiration of the 30-day period beginning on the date the application is received by the Attorney General.

ISSUANCE OF CERTIFICATE

SEC. 203. (a) The Attorney General shall issue a certificate of review to an applicant for the certificate if the application for the certificate satisfies the requirements of section 202, unless the Attorney General determines under subsection (b) that the conduct specified in the applicaiton is likely to result in a violation of the antitrust laws.

(b)(1) Not later than 60 days after the Attorney General receives an application under section 202, the Attorney General shall determine whether the conduct specified in the application is likely to result in a violation of the antitrust laws, except that if before the expiration of the 60-day period the Attorney General requests that the applicant submit additional information, the Attorney General shall make the determi-

nation not later than the expiration of the 60-day period, or of the 30-day period beginning on the date the additional information is submitted, whichever period ends later.

(2) Unless the Attorney General determines that the conduct specified in the application is likely to result in a violation of the antitrust laws, the Attorney General shall immediately issue a certificate of review to the applicant. If the Attorney General determines that the conduct specified in the application is likely to result in a violation of the antitrust laws, the Attorney General shall promptly transmit to the applicant a statement of the determination and the reasons in support of the determination.

(c) If the Attorney General denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of all documents submitted by the applicant in connection with the issuance of the certificate, the Attorney General shall return to the applicant, not later than 30 days after receiving the request, the documents and all copies of the documents available to the Attorney General, except to the extent that the information contained in a document has been made available to the public.

(d) The Attorney General shall specify in each certificate of review issued under this section—

(1) the conduct, including activities and methods of operation, to which the certificate applies,

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions applicable to the conduct.

(e) A certificate of review obtained by fraud is void ab initio.

REPORTING REQUIREMENT; AMENDMENT OF CERTIFICATE

SEC. 204. (a) Any person who receives a certificate of review—

(1) shall promptly report to the Attorney General any change relevant to the matters specified under section 203(d) in the certificate, and

(2) may submit to the Attorney General an application to amend the certificate to reflect the fact or effect of the change on the conduct specified in the certificate.

(b) For purposes of section 202 and section 203, an application for an amendment to a certificate of review shall be deemed to be an application for the issuance of a certificate of review, except that the effective date of the amendment shall be the date on which the application for the amendment is submitted to the Attorney General.

MODIFICATION OR REVOCATION OF CERTIFICATE

SEC. 205. (a) If at any time the Attorney General determines that the conduct engaged in under a certificate of review violates or is likely to result in a violation of the antitrust laws, the Attorney General shall give written notice of the determination to the person to whom the certificate was issued. The notice shall include a statement of the reasons in support of the determination. In the 30-day period beginning 30 days after the notice is given, the Attorney General shall modify or revoke the certificate, as may be appropriate.

(b) The person to whom the affected certificate was issued may bring an action in any appropriate district court of the United States to set aside the determination made under subsection (a) on the ground that the determination is erroneous.

JUDICIAL REVIEW; ADMISSIBILITY

SEC. 206. (a) Except as provided in section 205(b), no determination made by the Attorney General with respect to the issuance, amendment, or revocation of a certificate of review shall be subject to judicial review.

(b) No determination made by the Attorney General with respect to the issuance, amendment, or revocation of a certificate of review shall be admissable in evidence in any administrative or judicial proceeding in support of any claim under the antitrust laws.

PROTECTION CONFERRED BY CERTIFICATE OF REVIEW

SEC. 207. (a) No person to whom a certificate of review is issued shall be subject to a criminal action for a violation of the antitrust laws or a violation of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(b) No person to whom a certificate of review is issued shall be liable for damages in a civil action brought by the Attorney General for a violation of the antitrust laws or of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(c)(1) No person to whom a certificate of review is issued shall be liable for damages exceeding actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for a violation of the antitrust laws or of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(2) If, with respect to any claim under section 4 of the Clayton Act (15 U.S.C. 15) brought against the person, the court finds that—

(A) the conduct alleged to violate the antitrust laws does not violate the antitrust laws,

(B) the conduct is conduct specified in a certificate of review, and

(C) the certificate of review was in effect at the time the conduct occurred,

the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(d) No person to whom a certificate of review is issued shall be liable under section 16 of the Clayton Act (15 U.S.C. 26), or any State antitrust law similar to such section, with respect to threatened loss or damage by a violation of the antitrust laws or of any State law similar to the antitrust laws if the threatened loss or damage arises from conduct specified in the certificate of review and if the certificate is in effect at the time the conduct occurs.

INJUNCTIVE RELIEF

SEC. 208. Except as provided in section 207(d), a certificate of review shall have no legal effect on the authority of a court to grant equitable relief in an action for a violation of the antitrust laws brought against the person to whom the certificate is issued. In granting the relief, the court shall have jurisdiction to modify or revoke the certificate of review, as may be appropriate.

DISCLOSURE OF INFORMATION

SEC. 209. (a) Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5, United States Code.

(b)(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Attorney General deems disclosure of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule issued under section 211 permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

DESCRIPTIVE GUIDELINES

SEC. 210. (a) To promote greater certainty regarding the application of the antitrust laws to export trade, the Attorney General may issue guidelines—

(1) describing specific types of conduct with respect to which the Attorney General has made, or would make, determinations under section 203 and section 205, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Section 553 of title 5, United States Code, shall not apply to the issuance of guidelines under subsection (a).

ISSUANCE OF RULES

SEC. 211. Not later than 120 days after the date of the enactment of this Act, the Attorney General shall issue rules to carry out this title.

DEFINITIONS

SEC. 212. For purposes of this title—

(1) The term "antitrust laws" shall have the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that the term shall include section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition,

(2) the term "Attorney General" means the Attorney General of the United States or his designee,

(3) the term "certificate of review" means a certificate issued by the Attorney General under section 203,

(4) the term "export trade" means the export of goods or services from the United States to foreign nations, and

(5) the term "State" shall have the meaning given it in section 4G of the Clayton Act (15 U.S.C. 15 g).

EFFECTIVE DATES

SEC. 213. (a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(b) Section 202 and section 203 shall take effect 90 days after the effective date of the rules first issued under section 211.

The SPEAKER pro tempore. Is a second demanded?

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York (Mr. BINGHAM) will be recognized for 20 minutes, and the gentleman from California (Mr. LAGOMARSINO) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Mr. BINGHAM).

(Mr. BINGHAM asked and was given permission to revise and extend his remarks.)

Mr. BINGHAM. Mr. Speaker, I yield such time as I may consume.

Mr. Speaker, H.R. 1799 has been brought to the floor with th concerted efforts of a number of Members of the House, and with the efforts of three committees.

On behalf of Chairman ZABLOCKI and myself, I would like to pay particular tribute to the gentleman from Washington (Mr. BONKER), the original sponsor of this resolution, who has been an inspiration throughout and has been determined to bring this legislation to enactment.

The chairman of the Committee on the Judiciary (Mr. RODINO), and his ranking member, the gentleman from Illinois (Mr. MCCLORY), have been most cooperative in helping to move the legislation and they have reported the antitrust title, which is title II of H.R. 1799, which the distinguished chairman of the Committee on the Judiciary will explain a little later. That is part of the motion, and the version of title II as amended by the Judiciary Committee will be passed if the House agrees to the motion.

In addition to the reporting the antitrust title of H.R. 1799, the Committee on the Judiciary has reported companion legislation which makes an important contribution to the efforts to facilitate the formation of export trade associations. That is H.R. 5235, but that will not be before the House today.

The third portion of the package rested with the Committee on Banking, Finance and Urban Affairs. That is represented by title I of H.R. 1799. The provisions of title I as they appear in the motion that we are making have been amended in a separate bill, H.R. 6016, by the Committee on banking, Finance and Urban Affairs, as will be explained when that bill comes before the House immediately following this one.

The differences will be resolved eventually in the motion to go to conference. That motion will be to stike all after the enacting clause of the Senate bill, S. 734, and substitute the language of the bill brought to the floor by the Committee on Banking, Finance and Urban Affairs, and the first sections and title II of H.R. 1799.

Mr. Speaker, this bill is but one of a number of measures needed to enhance the competitiveness of U.S. goods and services in export markets and thereby to strengthen the economy and preserve American jobs. It would remove some of the obstacles to trading company formation and operations in the United States. It would do that by providing for a central office in the Commerce Department charged with facilitating the activities of trading companies and it would provide, under title II, somewhat greater assurance of exemption from antitrust restrictions to the export activities of trading companies.

□ 1320

It would also, under title I by the Banking Committee, permit certain banking institutions to invest in trading companies, providing greater access to financing, which is such an important and scarce ingredient in successful trading company operations. As the Members can see, the bills being brought to them today are the product of several committees. They are not entirely satisfactory to all of us, but such compromises never are. I do hope that some of the provisions of titles I and titles II can be considered further, and perhaps modified, in the course of the conference.

I believe, for example, that the antitrust benefits of Webb-Pomerene Act coverage should be accorded to exporters of services as well as the exporters of goods. That is not included in H.R. 1799 as amended by the Judiciary Committee. I am hopeful that provision can be reviewed in conference and possibly restored to this bill with the support of the distinguished chairman of the Judiciary Committee. Likewise, I believe it is crucial that, in providing for investment by bank-holding companies in export trading companies with the approval of the Federal Reserve Board, we not impose new restrictions on the operations of export trading companies which would reduce their export effectiveness. That would be strengthening them with one hand and weakening them with the other.

Nothing in current laws prohibits the formation and operation of trading companies which specialize in marketing U.S. goods and services abroad. Indeed there are hundreds of such companies operating with varying degrees of success in the United States today. Many of them are extremely effective in penetrating foreign markets with appropriate U.S. goods and services and producing sales that probably would otherwise go to companies from other nations.

International trading, however, is a tough business. It requires a thorough knowledge of both the United States and foreign markets, and the many complexities of international trade, finance, shipping, and other trade services. It requires capital. It requires, most of all, good salesmanship and an ability to take risks that other companies might not take.

The Subcommittee on International Economic Policy and Trade, which I have the honor to chair, held extensive hearings on this and predecessor legislation in both the current Congress and in the 95th Congress. We heard testimony from a wide range of public and private witnesses, including many trading companies. Members of the subcommittee and the subcommittee staff also have talked informally with international traders and trading company officials. On the basis of this extensive consultation, I feel confident that this is useful legislation which will be helpful to U.S. export efforts without detracting from important antitrust and banking practices and principles.

At this time, Mr. Speaker, I want particularly to commend the efforts of the gentleman from Washington (Mr. BONKER), a member of the subcommittee, for his patient yet persistent efforts on behalf of this legislation. He was the leading sponsor of similar legislation in the last Congress, which was reported favorably by the Committee on Foreign Affairs but never reached the floor because other committees of jurisdiction had not completed action. He reintroduced the legislation early in this Congress, and has worked tirelessly to see that meaningful export trading company legislation reached the House floor. No Member of this House has been more diligent on behalf of this legislation than the gentleman from Washington, and I commend him for his authorship of H.R. 1799 and for the broader role he has played in the effort to make trading companies a more effective and vital part of the U.S. export sector. His devotion to jobs through exports is well known from his leadership of the House Export Task Force, and enactment by the Congress of this export trading company legislation is but one outcome of the attention to the problems of the export sector which the task force has focussed under his leadership.

Finally, Mr. Speaker, this bill should not be regarded as a panacea for all of our economic problems. I feel that it will help reduce our alarming export trade deficit, but it will not eliminate that deficit. The causes of the deficit are more fundamental than export trading companies. The deficit is largely a function of the productivity of the U.S. economy and the value of foreign currencies in relation to the dollar, which will have to be addressed in other ways, legislative and otherwise. Nor will this legislation put every American back to work, although I believe it will produce and restore some jobs.

Mr. Speaker, I believe this is constructive legislation which deserves the support of the House. It has the support of the current administration, just as it was supported by the previous administration. I am sure all of the committees of the House which have taken part in considering it will conduct careful oversight to determine its effects after it has been enacted. Hopefully, the spotlight that this legislation has put on export trading companies will make American businesses and business officials more will-

ing to use trading companies as intermediaries to increase their export sales. Many American companies have either ignored foreign markets or tried to do their own export marketing without the expertise and experience and contacts that a good trading company can bring to the export effort. I hope this legislation, if it does nothing else, will reverse that attitude and help to establish trading companies as respectable and necessary participants in the national economy, and give them the standing they deserve both with the Federal Government and with the broader U.S. business community. It has become a cliche that the Europeans and Japanese have used export trading companies to their advantage to capture a larger share of international markets. This legislation does not purport to replicate Japanese trading companies in the United States. That is impractical and probably undesirable. But it is time we recognize export trading companies for the important force they are and can be in the difficult business of exporting, and that we try to remove some of the unnecessary obstacles they face in competing for international business on behalf of U.S. producers. H.R. 1799 goes a long way in that direction. It is about time that we enact this kind of legislation, before more of our markets and jobs are lost. I commend all of the committees and Members who have sponsored and supported this legislation, and I urge its adoption by the House.

Mr. Speaker, I reserve the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LAGOMARSINO asked and was given permission to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, as a cosponsor of H.R. 1799, I want to congratulate the administration, and particularly Secretary of Commerce Mac Baldrige, for their tireless efforts in promoting the export trading company concept.

The Members of this House are fully aware, I am sure, that ETC legislation has been the subject of extensive hearings in three committees in the House over a period, in some cases, of several years. The other body passed legislation during both the 96th Congress and the 1st session of the 97th Congress, and only now have we finally reached the floor with our own export trading company bill. It is long overdue, but we can be thankful that it is finally here.

I believe H.R. 1799 represents a responsible approach to helping improve America's export capability and thereby improving our serious balance-of-trade deficit. By promoting the establishment of export trading companies, H.R. 1799 should prove to be particularly beneficial for small and medium-sized businesses that do not have the experience or resources to attempt export trade on their own. The bill also establishes a procedure for the Attorney General to issue certificates of review indicating the ETC would not be in violation of antitrust laws. The certification procedure developed by H.R. 1799 would provide greater certainty for export trading companies' operations.

It was this lack of certainty in the Webb-Promerene Act that kept that law from serving as a greater stimulus to export trade. By correcting the deficiencies of that law and adding "services" to the accepted list of activities that can be the basis for forming ETC's, H.R. 1799 goes a long way toward meeting the challenge of the Japanese and European trading company competitors.

The administration strongly supports this bill and the concept of export trading companies. As Secretary Baldrige says:

Export trading company legislation is an important step in mobilizing our untapped export resources. The risks and costs involved in marketing products overseas, coupled with a lack of knowledge of foreign markets and of the cultural complexities of an unfamiliar society, deter small and even medium-sized companies from attempting to export their goods. The existence of ETC's who specialize in exporting, who can assume the risks, who have the financial capability and the legal and technical expertise to penetrate foreign markets, will permit these small and medium-sized firms to improve greatly their export performance.

Another important feature of H.R. 1799 is the reference to the role of States in initiating, promoting, and expanding exports in their own efforts to improve export trade. Certainly, in the case of California, the State has been a leader in shaping export policy that deals efficiently with trade and services with its neighbors to the South and in the Pacific basin.

I strongly support the provisions of H.R. 1799 designed to promote the development of new export trading companies dealing in goods and services. I urge my colleagues to give their full support to this bill.

Mr. BINGHAM. Mr. Speaker, I yield 5 minutes to the gentleman from Washington (Mr. BONKER).

(Mr. BONKER asked and was given permission to revise and extend his remarks.)

Mr. BONKER. Mr. Speaker, the export trading company is an issue whose time has come. I first introduced this bill in the last session of Congress, and reintroduced it in this session. Thanks largely to the leadership efforts of the chairman of the subcommittee, the gentleman from New York (Mr. BINGHAM), whose retirement will be greatly noticed in the House and on this Foreign Affairs Committee; and the Chairman of the Judiciary Committee (Mr RODINO), who has carefully crafted the antitrust provisions, do we have this bill before us today.

Mr. Speaker, the United States has traditionally relied on a growing domestic economy to meet our growth needs, but today we find ourselves in a fiercely competitive world environment, where Japan alone has challenged U.S. preeminence in a number of areas. With respect to overall trade policy, the United States continues to be the number one exporter, but the fact of the matter is that we are rapidly losing our place in the world market. This is dramatized when our share in the market drops from 18.2 percent in 1960 to 12.9 percent in 1981. Measured by GNP, the United States is rapidly dropping behind other industrialized countries.

The fact is, the United States will not experience economic recovery at home until we realize our full potential on the world market. In the Northwest, we find our timber-based economy is no longer sufficient to meet our growth needs. Indeed, we are experiencing economic recession because we have not found new outlets for our traditional markets. But, when one considers in the Northwest our vast natural resources, the manufacturing capability, the excellent port facilities and our proximity to the Pacific Rim countries, we have tremendous potential in the world market, and if we effectively compete in that market, we can experience economic revival in the Northwest.

Exports mean jobs. That was the theme of the Department of Commerce during World Trade Week, and when one looks at the fact that today exports account for over 3.5 million jobs, and the fact that every $1 billion in manufactured goods represents 31,000 new jobs, one can readily understand and appreciate the importance of export trade in terms of jobs created in this country.

Chase Econometric has estimated that the export trading company bill, if enacted, will create anywhere between 320,000 and 600,000 jobs in this country, and it will increase the GNP by $27 to $35 billion, and reduce the Federal deficit by $11 to $22 billion.

The export trading company bill is the top priority trade issue for many business organizations, including the Chamber of Commerce. It is a top priority issue for this administration. The President's Export Council has rated it No. 1, and the Export Task Force, which I chair, has listed it as a very important issue.

The export trading company bill will benefit primarily the small- and medium-sized firms that have the capability but lack the facility and resources to get into the world market. It has been estimated by the Department of Commerce that there are about 20,000 medium-sized firms that have the capability and have the products to compete in the world market, but lack the opportunity to do so. Why? Because they are inhibited by at least three reasons:

First, they lack the financial capital to get into the export market. This bill

will allow participation by the banks in the formation of ETC's, and provide essential financial capital to start up and operate export trading companies.

Second, antitrust provisions have served as an inhibiting factor. Through a certification procedure, provided for in the bill, which the Department of Justice will review and approve, ETC's will enjoy immunity from antitrust laws. Largely through the work of the chairman of the Judiciary Committee, I think we have overcome that hurdle and removed the uncertainty that now plagues companies that come together for that purpose.

Lastly, we need to raise the trade consciousness of many businessmen who want to get into the market but lack the imagination. The Department of Commerce is going on a nationwide campaign to educate businessmen of their potential and capabilities to get into the export market. Mr. Speaker, this legislation and this legislation alone addresses all three of those issues.

□ 1330

In conclusion, Mr. Speaker, let me say that if we are going to have economic recovery in this country, we have got to realize our true potential in the world market. All of the reports indicate that there is a very attractive market out there, and that we have the manufacturing capability to compete in that market. Passage of this bill today makes that potential a reality.

Mr. Speaker, I have letters that I wish to have inserted in the RECORD, from the Chamber of Commerce, Trade Net, and other trade organizations supporting this legislation, plus a summary of the bill.

Those materials are as follows:

H.R. 1799—THE EXPORT TRADING COMPANY ACT OF 1981

CHRONOLOGY OF LEGISLATION

On the basis of hearings in the 96th Congress, the Committee on Foreign Affairs reported favorably legislation to encourage the formation and operation of export trading companies and associations (H.R. 7230, Export Trading Company Act of 1980, introduced by Mr. Bonker of Washington, and others, House Report 96-1151), which was similar to H.R. 1799. Two other committees of the House to which that and similar legislation was referred jointly failed to complete action, however, and the 96th Congress adjourned without having an opportunity to consider H.R. 7230.

H.R. 1799 was introduced by Mr. Bonker, a member of the Foreign Affairs Committee, and other Members, on February 6, 1981, and was subsequently referred to the Subcommittee on International Economic Policy and Trade. Following several subcommittee hearings on it and related bills, the subcommittee on March 29, 1982, marked up H.R. 1799 and reported it favorably to the full Committee on Foreign Affairs with several amendments.

The full Committee on Foreign Affairs considered the subcommittee's recommendations on H.R. 1799 on April 29, 1982, and ordered the bill favorably reported to the House.

The Judiciary Committee favorably reported H.R. 1799 (House Report 97-637, Pt. II, to be filed July 27). The Banking, Finance and Urban Affairs Committee did not act on H.R. 1799, but did report a bill (H.R. 6016) whose provisions are almost identical to the banking provisions of H.R. 1799.

NEED FOR THE LEGISLATION

Lack of operating capital and financing is the major obstacle to expanded sales faced by American trading companies. Few U.S.-based trading companies are publicly traded corporations. Most are privately held, inhibiting their ability to raise capital through issuance of stock or other debentures. Few have significant assets except for accounts receivable, against which most U.S. banks have been traditionally reluctant to grant loans. Not only are trading companies generally among the most asset-poor firms competing for bank loans, their business success depends upon their ability to penetrate *often poorly understood foreign markets* and to take other risks, such as operating on the basis of oral rather than written contracts, and sales agreements. The successful trading company turns such risks into profits by experience and intimate knowledge of its markets and customers.

Such intangibles, however, rarely meet the requirements of bank lending officers who must justify their loans to cautious superiors and regulatory agencies. Trading companies, therefore, typically command the lowest loan ratings of any of the categories of businesses seeking bank loans. Most trading company officials who testified before or otherwise consulted with the committee indicated that they are able to borrow only on their personal lines of credit, or against company reserves pledged as collateral. They were unanimous in citing this as the major constraint on their business, particularly when their foreign competitors have much greater access to short- and long-term financing.

Statutory provisions and government regulations that directly or indirectly discriminate against trading companies are a second obstacle to their increased effectiveness as U.S. exporters. The reluctance of banks to finance exports is itself a product of banking laws that place a high premium on cautious lending policies and impose strict separation between banks and commercial enterprises such as trading companies. In addition, the restrictions, complexity, and uncertainty of current antitrust laws inhibit producers of similar products and services from entering into cooperative arrangements for purposes of export marketing that could increases their exporting effectiveness.

As early as 1918, the Congress recognized the need to facilitiate the export of U.S. goods by exempting the export activities of firms from certain U.S. laws that would place them at a competitive disadvantage in foreign trade. In that year, the Congress passed the Webb-Pomerene Act permitting U.S. firms to form associations strictly for the purpose of exporting goods without the antitrust constraints applicable to domestic trade. In the 1930's there were as many as 57 Webb-Pomerene associations accounting for some 19 percent of total U.S. exports. By 1979 the number had declined to 33, accounting for less than 2 percent of U.S. exports. Antitrust exemptions under Webb-Pomerene are not available to exporters of services, currently one of the strongest U.S. export sectors, and many producers of goods regard Webb-Pomerene as providing insufficient protection from antitrust penalties.

No Federal agencies are explicitly charged with assisting trading companies and assuring that Federal regulations do not unnecessarily hamper trading companies. In fact, some Federal regulations and practices have just such an effect. For example, Commerce Department rules governing U.S.-sponsored international trade fairs discourage exhibitors from displaying more than one line of merchandise per booth. Export trading companies, however, typically handle disparate lines of merchandise, and many are too small to be able to afford more than one booth. Such mundane government insensitivity to the needs of trading companies, while often inadvertent, is nonetheless damaging to their effectiveness as exporters.

The need for assistance to trading companies in these three areas—access to financing, assurance of antitrust exemption for specific export practices and activities, and designation of a federal agency responsible for trading companies—was the basis for the formulation of H.R. 1799.

THE POTENTIAL FOR EXPORT TRADING COMPANIES

The last decade was a period of frustration and disappointment for the United States in the area of international trade. Our first trade deficit of the 20th Century occured in 1971. While we have had a deficit *nearly every year since, it is incorrect* to place the blame solely on oil prices.

Many of our trading partners whose dependence on imported oil is greater than ours have consistently maintained a trade surplus while the U.S. was in deficit. Their success was due in part to an export consciousness, which has resulted in the displacement of American-made manufactured goods in world markets, including the largest single market—the United States.

The U.S. no longer can afford to ignore the value of export trade and the importance it plays in our domestic economy. During the last two decades, the U.S. share of world exports dropped from 18 percent in 1960 to 15.4 percent in 1970. It stood at 12 percent last year. Today, exports of goods account for only 8.2 percent of our gross national product, the lowest percentage of any industrialized nation in the world. While numbers vary according to the source the trend is as clear as it is alarming. Without a change, this trend could cost the United States hundreds of thousands of jobs, billions in economic activity, and the productivity boost that increased exports could generate for American industry.

The U.S. Government has not been as active in encouraging export trade or in providing assistance to the business community as have the governments of other nations. The American businessman perceives, and rightly so in many cases, that government regulations are impediments to international trade. These regulations can be ambiguous, confusing, and expensive. These self-imposed disincentives have served to deter many small- and medium-sized American companies from entering the international marketplace.

For years, our growing domestic market has satisfied the needs of the American businessman. He consequently has not had the need nor the desire to look into foreign markets that were often unreliable and risky, as well as politically and socially alien. Moreover, the American businessman lacked an expertise in conducting foreign sales—from locating the foreign buyer to packing, shipping, and completing export documentation.

Only 10 percent of the 250,000 manufacturing firms in the United States currently export. Fewer than one percent of these firms account for 80 percent of our exports. The Department of Commerce and others have estimated up to 20,000 U.S. manufacturers and agricultural producers offer goods and services which would be highly competitive abroad. Yet the small size and

inexperience of these firms leave them ill-equipped to absorb the costs and risks involved in developing overseas markets.

The current, prolonged recession has been a shock to many American businessmen, who are beginning to realize that the domestic economy cannot expand indefinitely. Export Trading Companies could provide America with a new service-industry able to lead thousands of new firms into overseas markets.

A private study by Chase Econometrics has estimated that by 1985, Export Trading Companies would increase the gross national product by $27 to $55 billion, increase employment by 320,000 to 640,000 jobs, and reduce the Federal deficit by $11 to $22 billion.

THE FUNCTION OF EXPORT TRADING COMPANIES

H.R. 1799 permits bank holding companies, with the approval of the Federal Reserve Board, to invest up to 5 percent of consolidated capital and surplus in an Export Trading Company. Extension of credit by a bank holding company to its ETC would be limited to 10 percent of the holding company's capital stock and surplus to any single trading company, and 20 percent of such stock and surplus to all trading companies. The bill also permits banking institutions organized under the Edge Act to invest up to 25 percent of capital and surplus, subject to the same requirements of Federal Reserve Board approval and limitations.

Title II of H.R. 1799, the antitrust provisions, provides limited protection from antitrust litigation. In 1918, Congress passed the Webb-Pomerene Act which was designed to allow U.S. companies to combine for exporting in ways that might otherwise have subjected them to antitrust liability. Webb-Pomerene exempts from the Sherman Antitrust Act any association which has been established "for the sole purpose of engaging in export trade," provided it does not lessen domestic competition. When the Act was passed, it was believed that export trade would be enhanced as small businesses would be able to share the costs and risks of exporting. The percentage of exports assisted by the approximately 30 existing Webb-Pomerene associations is currently less than 2 percent. It has been stated that the Act's lack of success is due to the fact that it does not extend its antitrust exemption to the service sector, and its statutory vagueness and uncertainty in interpretation and application create a potential threat of subsequent antitrust litigation.

As amended by the Judiciary Committee, H.R. 1799 provides for a certification procedure to be established within the Department of Justice. Upon review, the Justice Department may grant the trading company a certificate which provides protection against criminal and civil suits by the Government and substantial protection from private antitrust suits. I have included a section-by-section analysis which more fully explains the bill.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

Section 1 provides that the act may be cited as the "Export Trading Company Act of 1982."

Section 2—Findings; declaration of purpose

Section 2 sets forth the findings of the Congress, including: that "exports are responsible for * * * one out of every nine manufacturing jobs * * * and one out of every seven dollars of total United States goods produced"; that service-related industries "offer the greatest potential for significantly increased industrial trade"; that export services in the United States are fragmented and the U.S. economy needs "well-developed export trade intermediaries"; that State and local governmental authorities "can be an important source for expansion of total United States exports"; and that U.S. trading companies "should be able to draw on the resources, expertise, and knowledge of the United States banking system."

The purpose of the legislation is to increase U.S. exports by establishing in the Commerce Department an office to promote export trading companies and export trade associations, by transferring to the Commerce Department responsibility for administering the Webb-Pomerene Act, by making that act applicable to the export of services as well as goods, and by otherwise encouraging more efficient export trade services.

Section 3—Definitions

"Export trade," "export trade services," "export trading company," "export trade associations," and "United States" are defined in section 3 of the bill. These definitions, however, apply only to sections 2 through 4 of the bill because Titles I and II (below) contain their own definitions, or employ definitions in existing statutes.

Section 4—Office of Export Trade in the Department of Commerce

Section four directs the Secretary of Commerce to establish within the Department of Commerce an office to promote and encourage formation of export trade associations and export trading companies.

TITLE I—EXPORT TRADING COMPANIES

Title II amends the Bank Holding Company Act of 1956 and the Federal Reserve Act to facilitate the financing of export trading companies.

Section 101(a) amends the Bank Holding Company Act of 1956 to permit bank holding companies, with the approval of the Federal Reserve Board, to invest up to 5 percent of consolidated capital and surplus in an export trading company. In granting such approval, the Federal Reserve board is directed to consider the "financial and managerial resources, competitive situation, and future prospects" of the investing company and the export trading company, and may impose restrictions "to prevent conflicts of interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair competition." Extension of credit by a bank holding company to its export trading companies would be limited to 10 percent of the holding company's capital stock and surplus to any single trading company, and 20 percent of such stock and surplus to all trading companies. Export trading companies could underwrite, sell, or distribute securities in the United States only to the extent their investing bank holding companies could legally do so, and could not engage in manufacturing or agricultural production, or use a name similar to a parent banking organization.

Subsection (b) amends section 25(a) of the Federal Reserve Act to permit banking institutions organized under the Edge Act to invest up to 25 percent of capital and surplus, subject to the same requirements of Federal Reserve Board approval and limitations as described for bank holding companies in subsection (a) above.

The amendments made by this title define "export trading company" as a company organized "principally" for the purpose of exporting, or facilitating the export, of U.S. goods and services.

TITLE II—ANTITRUST PROVISIONS

Title II substantially amends the Webb-Pomerene Act (the "Act") to expand the eligibility of export trading organizations for exemption from the antitrust laws, and to provide the Federal certification of such exemptions.

Section 201 amends the definition section of the Act to include definitions of export trade (which is defined to include the export of goods *and services*) and export trading companies, which will also be eligible for the antitrust exemptions under section 2 of the Act.

Section 202 amends section 2 of the Act to exempt from antitrust law restrictions the activities of export trading associations and export trading companies provided those activities are not in restraint of trade within the United States, do not restrain any domestic competitor, and do not substantially lessen competition within the United States, except to the extent such activities may have a "direct substantial and reasonably foreseeable effect on trade or commerce within the United States." Such exception is to be specified in a certificate issued under section 4 of the Act.

Section 203 makes a technical amendment to section 3 of the Act.

Section 204 amends the Act to provide for procedures for the certification of export trade associations and export trading companies for the antitrust exemption provided in the Act. Applicants are required to submit information set forth in section 4 of the Act, including such information as the Secretary of Commerce (the "Secretary") considers necessary. The Secretary is required to issue a certificate within ninety (90) days after receiving an application, after consultation with the Attorney General and the Federal Trade Commission, specifying permissible export trade activities and methods, and any terms or conditions the Secretary considers necessary. Provision is made for expedited certification for temporary export trade activities and bidding or export sales deadlines. Certification decisions of the Secretary may be appealed under sections 556 and 557 of Title 5, United States Code (provisions of the Administrative Procedure Act). Provision is made for amendment of certificates on the basis of material changes affecting certified export trading companies and associations, and for modification of the activities of certified companies or associations and revocation of certificates by the Secretary, after opportunity for a hearing in accordance with Section 554 of Title 5, United States Code. The Attorney General and Federal Trade Commission are authorized to bring court actions to invalidate certifications 30 days after notice to the affected export trading association or export trading company, and no other person has standing to bring such actions.

Section 204 also amends the Act as follows: The Secretary is directed to issue proposed guidelines, within 90 days after enactment of the bill, for determining whether an export trade association or export trading company meets the requirements for certification under the Act. The guidelines are to be open for public comment for a period of 30 days prior to publication of final guidelines. Promulgation of these guidelines is exempt from the Administrative Procedure Act. Certified export trade associations and export trading companies are required to report to the Secretary annually on activities relevant to their certificates. Information submitted by export trade associations and export trading companies with respect to certification and in the required reports shall be confidential and exempt from disclosure (except for certain law enforcement procedures) to the extent the information deals with trade secrets or confidential business or financial information. The Secretary may require modi-

fication of the operations of a certified association or trading company to comply with the international obligations of the United States. The Secretary is directed to issue regulations to carry out the Act, after consultation with the Attorney General and the Federal Trade Commission.

Section 205 provides that export trade associations operating under the Webb-Pomerene Act immediately before the enactment of the bill may elect to continue to be governed by the Act as in existence prior to enactment, or by the Act as amended by the bill. If they choose the latter, they are certified automatically under the new provisions of the act upon filing the required applications for certification within 180 days after the date of enactment of the bill. Mr. Speaker, I am including letters from some of the interest groups, including the U.S. Chamber of Commerce and the Emergency Committee for American Trade, who have followed the progress of this legislation closely, and who are in support of our efforts.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, D.C., July 26, 1982.

Hon. DON BONKER,
Chairman, House Export Task Force,
U.S. House of Representatives, Washington, D.C.

DEAR DON: The U.S. Chamber of Commerce, an association of more than 250,000 members, respectfully requests that you urge all members of the House Export Task Force to support the export trading company (ETC) legislation when it comes to the House floor.

For more than three years, the Chamber has worked for passage of a bill that would promote and facilitate the formation of export trading companies—a private sector one-stop shop that could provide all of the services associated with exporting. This would be particularly beneficial to our small- and medium-sized business members. As one Chamber small businessman put it before the International Finance Subcommittee of the Senate Banking Committee, ". . . if you want to encourage exports by smaller firms and reorientate us to thinking in world market terms, then this legislation is desirable and is perceived by businessmen like me as a good idea long overdue."

A clear antitrust picture with respect to export combinations, as the certification process in H.R. 1799 provides for, will contribute significantly to the development of ETCs. Participation in ETCs by bank holding companies and bankers' banks, as provided for in H.R. 6016, brings both international expertise and financial resources to these export combinations.

While we believe that there is some room for improvement in both bills, as well as in the Senate-passed version S. 734, the parameters of these three bills are such that the conference on the House and Senate versions should produce an excellent piece of legislation. The Chamber will share its recommendations with the conferees at the appropriate time.

Quick House action is now in order, so that the legislation can be finalized and companies can begin to take advantage of this beneficial export format. Your leadership, along with that of Reps. St Germain and Rodino, on this important legislation is greatly appreciated.

We hope that every member of the House Export Task Force will support the export trading company legislation when it comes to a floor vote.

Sincerely,

MICHAEL A. SAMUELS.

STATEMENT OF CALMAN J. COHEN, VICE PRESIDENT, EMERGENCY COMMITTEE FOR AMERICAN TRADE

"The trading company legislation pending before the Congress is designed to promote U.S. export activity. U.S. business will be able under the legislation to learn in advance whether activities which they wish to undertake could lead to antitrust litigation.

The export trading companies themselves could provide to firms virtually all the services necessary to market and sell abroad, including the financing of export transactions.

Trading companies should enable many thousands of small and medium-sized businesses to venture for the first time into the international trade arena, which otherwise would be too risky a proposition for any one of them individually. In part this will be the case because it will be the trading company—and not the small firms supplying the trading company—that will take the many risks associated with export.

Most importantly, in many developing regions of the world—where sales and distribution networks of U.S. firms are often rudimentary—export trading companies have major potential. Trading companies can take on and perform well the brokering role between U.S. producers and developing country purchasers for industrial and agricultural products that will be in increasing demand throught the developing world.

Your leadership, Congressman Bonker, on export trading company legislation, together with that of your colleagues, gives ECAT members hope that we will see enactment of legislation in this session of the Congress.

TRADE NET,
Washington, D.C., July 26, 1982.

Hon. DON BONKER,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN BONKER: On the occasion of export trading company legislation reaching the floor, Trade Net would like to commend you for the fine job you have done in its formulation and committee management. Trade Net is especially interested in this legislation because of the locus on small- and medium-sized businesses which are or could be an integral component of the lives of many of the members of local-level organizations Trade Net plans to interest and involve in the promotion of export trade. Happily, the impact of increased exports by businesses of this magnitude will be felt personally, particularly in the area of jobs, by a wide variety of this country's citizens.

Trade Net would also like to take this opportunity to offer our compliments on your leadership of the House Export Task Force. Trade Net, which numbers among its Directors former Cabinet Members from both Republican and Democratic Administrations—William E. Simon, Bob Bergland, W. J. Usery, Jr. and Reubin O'D. Askew—feels strongly about the importance of nonpartisanship when it comes to international trade. You so effectively have adhered to that concept as you fulfilled the role of motivator and facilitator. Your efforts have not gone unnoticed and are greatly appreciated by those of us who value an open world trading system.

We urge and look forward to a speedy enactment of export trading company legislation and, thus, a successful culmination of your diligent efforts.

Sincerely,

SHANA GORDON,
President, Trade Net.

NATIONAL ASSOCIATION OF MANUFACTURERS,
July 27, 1982.

Hon. DON BONKER,
U.S. House of Representatives,
Washington, D.C.

DEAR DON: The need for legislation to encourage American export trading companies has if anything grown more acute since the first such bill was introduced by Senator Stevenson in August of 1979. The series of U.S. trade deficits has continued unabated: 1979, $40.4 billion; 1980, $36.4 billion; 1981, $39.7 billion. We have admittedly had significnat growth in our exports, which went from $181 billion in 1979 to $233.7 billion in 1981. Further exports are now clearly essential to job creation. According to a recent Commerce Department study, fully thirty percent of the increase in private sector employment between 1977 and 1980 can be attributed to the production of manufactured goods for export. These gains, however, have not been sufficient to offset the serious problems of large, important and import sensitive sectors of the economy. As a result Congress is now avtively considering ill-advised import restrictions, i.e. domestic content legislation, the effect of which could well be to weaken further our international competitiveness. We may avoid these errors in the 97th Congress, but we will not avoid them long unless Americans see tht an open international trading system works to their advantage, unless we improve U.S. competitiveness.

The Export Trading Company Act, H.R.1799, which you introduced in February, and the Bank Export Services Act, H.R. 6010, which Chairman St Germain introduced in March, are significant and very helpful steps in the right direction. The news that these bills will be taken up by the full House this week was welcome indeed. I have long believed that the House as a whole broadly supports these measures, and I am confident that, if they are put before the House, they will pass. You, Chairman St Germain, and others who have worked to bring this about deserve high praise.

It goes without saying that I would not in any way wish to diminish the significance of your achievement. It is simply a truism that the ultimate value of the legislation will depend in part upon decisions still to be made, namely the decisions of the conferees whith respect to the difference between the House bills and the Export Trading Company Act as passed by the Senate in April of 1981, S. 734. I shall not attempt to review in detail each point of difference. I would however like to go over the most important of these briefly.

BANKING

The first point to be made is that the House Banking Committee, under the leadership of Chairman St Germain, did an excellent job in crafting a legislative proposal that is both prudent and potentially very helpful. Its fundamental approach is somewhat different from that of the Senate bill. The latter is freestanding while the former achieves its purpose by amending the Bank Holding Company Act of 1956. There is much to be preferred in the House bill, and the objectives of the legislation could be well served by either. We do feel, however, that there is merit in stating these objectives explicitly within the body of the bill as is done in S. 734. Here I have in mind the

language especially of Section 102(b) of S. 734, which explains that, "The purpose of this Act is to increase United States exports of products and services, particularly by small, medium-sized, and minority concerns, by encouraging more efficient provisions of export trade services to American producers and suppliers." We hope the conferees will decide to retain such a statement of purpose in the final version of the bank ETC bill.

Our chief concern, however, over the differences between the two approaches to bank involvement with export trading companies is a definitional one. H.R. 6016 defines an export trading company as an entity involved "exclusively" in exporting. The Committee has made an attempt to ensure that this definition is not unduly confining, but it may nevertheless prove to be so. Trading companies are not manufacturers—under this legislation they are not allowed to be—and they will need to buy as well as sell abroad if they are to thrive. Specifically, they will need to import and to engage in third country trade. It is perfectly reasonable to expect such entities, favored under the law for their capacity to expand exports, to be engaged "principally" in exporting, but it would be self-defeating to impose the requirement that ETCs be exclusively involved in exporting or to force them to justify their non-exporting activities on a transaction-by-transaction basis. We hope, therefore, that the House, in conference, will reconsider this limitation within the definition of bank-related export trading companies.

Another aspect of the House's definition of export trading companies, as expressed in H.R. 6016, also concerns us. The Senate bill includes insurance among the services that can be performed by export trading companies; H.R. 6016 does not. It has long been the view of those who support the export-trading company idea that the more nearly an export trading company could approximate a one-stop, comprehensive export service, the more valuable it would be to American exporters. We urge the House conferees to reconsider their views on this point as well.

Having suggested these changes, I should like to reemphasize that we think the Bank Export Services Act is an excellent bill, and we support it.

ANTITRUST

The principal virtue of H.R. 1799 was that it was neither a banking bill nor an anti-trust bill but an export-promotion bill. Throughout the history of such legislation, NAM has supported it. The unhappy link between U.S. competitiveness and U.S. anti-trust law has been clear for some time. The President's Export Council under President Carter, for example, concluded that: "Every reasonable effort should be made to facilitate U.S. exports and overseas operations by freeing U.S. firms from antitrust constraints or uncertainties where U.S. consumers are not adversely affected." H.R. 1799 and S. 734 are suggestions for achieving just this end.

Under the Senate bill, the Commerce Department is authorized to issue certificates exempting export trading companies from prosecution under antitrust laws. This can be done, of course, only after the Department has thoroughly reviewed an ETC application for such exemption and received the advice of the Justice Department and the Federal Trade Commission on the merits of issuing such certificate. Given the safeguards of the Senate bill, we feel this approach is sensible because it addresses directly the question of uncertainty. Unfortunately, as it now stands, the antitrust language of H.R. 1799 does not. By denying the Secretary of Commerce a meaningful role in the certification procedure the House bill undermines the procedure itself. If it prevails there will be no one in government with an institutional interest in providing the ETC applicant with the certainty about the application of the antitrust laws that is the rationale for this change in the law. The "certainty" is further unraveled by permitting single damage suits, as the House bill does, even for conduct that has been certified as unlikely to violate the antitrust laws. It is our belief that U.S. competitiveness would be better served if the conferees were to favour the Senate bill when they consider the questions: Who should certify, and what degree of antitrust immunity should certification confer?

To repeat an earlier thought, the potential benefit of the ETC legislation now before he House is significant in itself and because it demonstrates our commitment as a nation to solve our trade problems by improving our competitiveness rather than by closing our markets. It appears, however, that the best law is neither in the House nor the Senate but in a judicious melding of the leading proposals of each. We shall, of course, follow closely the work of the conference and look forward to the opportunities this legislation will create for American business.

Sincerely,

LAWRENCE A. FOX.

Mr. BINGHAM. Mr. Speaker, I yield such time as he may require to the gentleman from Ohio (Mr. SHAMANSKY).

(Mr. SHAMANSKY asked and was given permission to revise and extend his remarks.)

Mr. SHAMANSKY. Mr. Speaker, I asked to get on the International Economic Policy and Trade Subcommittee of the Committee on Foreign Affairs because I am very much interested in promoting export of the U.S. industries. But there is a provision in this bill which I deeply regret, and for all the reasons that I am for the bill in general, I think we have to be aware of what is happening in this particular provision.

We had the Secretary of Commerce, Mr. Baldrige, testify that this statute was not intended to exempt the export trading companies that are certified from the application of our antitrust laws domestically, and that was affirmed by his General Counsel, Sherman Unger.

They both stated that, although export trading companies would be exempt from antitrust laws for their foreign activities, export trading companies would not be exempt from domestic antitrust implications of those activities. To underscore our mutual understanding of the purpose of this bill, I offered an amendment in subcommittee which stated that antitrust laws shall apply to conduct having a direct, substantial, and reasonably foreseeable effect on domestic commerce.

The bill before us has a different provision. Rather than applying fully antitrust laws to domestic activities of export trading companies, the bill exempts them from treble damages and provides only single damages.

This means that export trading companies could engage in antitrust activities domestically and the affected domestic competitors would be able to collect only single damages.

This is inconsistent with the assurances that were given to me only last week by the Secretary of Commerce.

I am convinced that in the near future we will see domestic firms damaged, if not destroyed, by actions that, except for the language of H.R. 1799, would have made the perpetrators subject to treble damages. To increase jobs in the export sector, we may be destroying jobs in the domestic sector.

Except for this particular section, I support legislation to expand American exports, I just regret that, in our enthusiasm to expand exports, we may have dealt a serious blow to our antitrust laws.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. SHAMANSKY) has consumed 1 minute.

Mr. LAGOMARSINO. Mr. Speaker, I yield 10 minutes to the gentleman from Illinois (Mr. McCLORY).

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, I rise in support of title II of H.R. 1799, the antitrust provisions, which were referred to the Judiciary Committee and to which the Subcommittee on Monopolies and Commercial Law gave long and careful consideration. There were times when I and others felt that our consideration was becoming altogether too long and too careful, but the bill which we have ultimately reported is a good one, and merits the support of every Member.

It is difficult to discuss this legislation without some reference to H.R. 5235, formerly H.R. 2326, the bill introduced by Chairman RODINO and myself to clarify the application of the antitrust laws to export trade activities. This was our initial response to the complaint that many American businessmen were unwilling or unable to compete with confidence in the international marketplace because of their uncertainty regarding their antitrust liability. That bill reflects our belief that the proper response to exporters who believe the law is unclear is to clarify the law. This, it seems to me, is far more important than the licensing procedures, such as the provisions in the export trading legislation passed by the Senate.

As the Rodino-McClory bill (H.R. 5235) has moved forward, it became evident that nothing less than some sort of certification system was desired by the business community, even if H.R. 5235 were to be enacted clarifying the non-application of our antitrust laws to purely foreign activities, Title II of H.R. 1799 is the Judiciary Committee's considered response. It compares extremely favorably with the Senate approach, I might say, in terms of simplified procedure, expedit-

ed processing and certain results. It provides exporters with a binding advisory opinion on the legality of their proposed conduct, rather than providing an outright antitrust exemption as the Senate bill attempts to do. This eliminates also the cumbersome requirement that exporters establish a special need as a condition precedent to exemption.

The only issue to be decided in processing an application under our bill is whether the proposed conduct is likely to violate the antitrust laws of the United States. The members of the Monopolies and Commercial Law Subcommittee were virtually unanimous, therefore, in deciding that this determination should be made by the Department of Justice rather than by the Department of Commerce. There would seem to be little benefit conferred by an antitrust certificate from the Department of Commerce which the Department of Justice could attack. And it would be wrong to bar the Antitrust Division from exercising its enforcement function, in my opinion, without its first having the opportunity to subject the proposed conduct to antitrust review.

An optional forwarding role for the Commerce Department is allowed, nevertheless, which should encourage the applicant to use that agency's informational and advisory services.

Careful thought was also given to the question of damages which may be recovered by a person injured by an antitrust violation committed by a person acting pursuant to a certificate. *There is no question, of course, that* treble damages lie for conduct outside of the certificate. It is also possible, however, although unlikely, that certified conduct may result in injury in domestic commerce. Although the administration and the Senate have suggested that certified conduct should be totally immune from liability, the Judiciary Committee of the House firmly believes that single damages are most necessary and appropriate. It is sometimes forgotten that antitrust damages are not only a penalty but a protection, and the person compensated most often will be another American business with a legitimate claim to be made whole for its antitrust injury.

Single damages for domestic injury by the holder of an export trade certificate were perceived as a fair compromise between the traditional statutory treble damages and no damages. If no damages were to be the rule, the governmental agency granting certification would have to be more conservative in close cases, granting benefits to fewer applicants. Furthermore, fairness would also then require that greater procedural protections be provided for interested parties who feared future injury since such parties would subsequently be denied damages.

On the other hand, with single damages as the rule, certification could take place administratively without a hearing, without third parties arguing their case, and thus without protracted delays. Finally, if no damages were to be the rule, the only way a court could compensate the injured American business would be to hold the conduct in question to be ultra vires, outside the certificate, in which case treble damages would lie. With a single-damages rule, however, the court would have a fairer solution available—one which compensates the injured party but does not punish the wrongdoer who believed that his conduct fell within the scope of the certificate.

Some have argued that the Senate bill is preferable because it protects exporters from lawsuits by providing zero damages rather than single damages where certified conduct causes the complained of injury. But our committee has given this argument a long, hard look, talked to antitrust lawyers, and found this argument without merit. For the Senate bill would only change the nature of pleading antitrust violations and probably result in treble damage awards on grounds that the conduct in question was ultra vires. Our bill would preserve and assure single damages for the injured plaintiff but would restrain the filing of lawsuits against exporters by means of the most liberal provision of attorney's fees for defendants within the sweep of my experience. For if the certified conduct has not violated the antitrust laws, the plaintiff must pay to the defendant exporter a reasonable attorney's fee even if the suit was brought in good faith and even if the suit was nonfrivolous. That should make plaintiffs think twice about suing an exporter holding a certificate.

Mr. Speaker, this bill has been carefully constructed to provide greater certainty to exporters by providing them the assurance of an antitrust review and certification procedure. I believe it will enable American businessmen to compete with far greater confidence and freedom of action overseas. This is what you want; it is what I want; and it is what our national interest requires. *Having worked this* long and come this far, I look forward to an early and successful conference with the other body on this measure, followed by final enactment of this important legislation into law.

Mr. Speaker, at this point I yield 4 minutes to the gentleman from Illinois (Mr. RAILSBACK).

The SPEAKER pro tempore. Without objection, the gentleman from Illinois (Mr. RAILSBACK) is recognized.

There was no objection.

(Mr. RAILSBACK asked and was given permission to revise and extend his remarks.)

Mr. RAILSBACK. Mr. Speaker, I would like to commend the chairmen and members of the committees with jurisdictional interest in the export trading company legislation. I feel that this action we are taking here today represents an extraordinary bipartisan effort on the part of these committees to enact meaningful legislation.

Over a year ago, Secretary of Commerce Baldrige testified before the House Judiciary Committee in favor of *export trading company legislation. In his testimony he emphasized the need for the United States to meet the* trade challenges of the coming decade. Our trading position in the world markets will be tested by emerging third world countries as well as by those nations which currently are highly industrialized, and we must develop ways to meet these challenges. Export trading company legislation such as we are considering here today would facilitate exporting by small- and medium-sized businesses which previously have not had the resources to engage in this kind of activity.

The certification procedure set up in title II will give assurance to these companies with respect to application of antitrust law. We worked very hard in the Judiciary Committee to set up a certification procedure which would give a role to both the Justice Department and the Department of Commerce. As agreed to by the committee, the primary responsibility is set up within Justice with Commerce assisting. I personally would prefer that the Commerce Department be given an even greater role in the certification procedure. I feel that Commerce traditionally has had the resources and expertise in trade matters and is currently committed to aiding the estimated 20,000 companies which have the potential to engage in export activities.

Mr. Speaker, we are reminded on a daily basis of the trade problems *which the United States encounters in* the international community. I, for one, feel that it is time that we stop putting barriers up which hinder exporting. With current economic and *trade conditions, I feel that it is imperative that the United States* pursue an expansionary export policy in the *1980's. Studies such as one done* by Chase Econometrics indicate that by *1985,* export trading companies could increase GNP by $27 to $55 billion, increase employment by 320,000 to 640,000 workers, and reduce the Federal deficit by $11 to $22 billion. At a time when Congress is grappling with the problems of unemployment and the Federal deficit, this legislation represents a rare opportunity to take some positive action. I urge my colleagues to give it their support.

□ 1340

Mr. MCCLORY. I want to commend the gentleman from Illinois (Mr. RAILSBACK) for his major contributions to this legislative product. He and I have worked long and hard in our Judiciary Committee, particularly on title II of this measure, and we are very proud to express our support for the measure before us here today.

Mr. Speaker, I reserve the balance of my time.

Mr. BINGHAM. Mr. Speaker, I yield 10 minutes to the distinguished chairman of the Judiciary Committee, Mr. RODINO.

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. Mr. Speaker, I rise in support of H.R. 1799. The Committee on the Judiciary has devoted a great deal of time and energy to writing this legislation, and it has the bipartisan support of our committee. Particularly noteworthy have been the efforts of the distinguished ranking minority member of the committee, Mr. MCCLORY, and the gentleman from New Jersey (Mr. HUGHES). They worked hard to reconcile the competing policies and to fashion appropriate compromises.

The concept of export trading company legislation first gained significant support during the Carter administration. The legislation we bring forth today is grounded in legislation proposed in the 96th Congress and refined in this Congress.

The changes in the antitrust laws in this legislation are based on a preception in the business world that those laws inhibit export trade in American goods and services. A number of witnesses in hearings of the Subcommittee on Monopolies and Commercial Law testified that they believed the antitrust laws inhibit American exports by forbidding joint export activity that produces economies of scale. In addition, there is some legal uncertainty about the domestic effects necessary for U.S. antitrust law to apply. According to testimony before the subcommittee, these problems are most acute for small- and medium-sized businesses, which most need to engage in joint activities to overcome the obstacles to export and which can least afford expert antitrust counsel.

Competing with the need to clarify the application of the antitrust laws on international transactions is the need to preserve our system of free competition here at home. As the Supreme Court has pointed out, the antitrust laws protect our economic freedom just as the Constitution protects our political and personal rights and freedoms. A proposal that weakens the antitrust laws must be approached carefully.

Our task, then, was to find ways to remove antitrust uncertainty from international transactions without weakening our domestic competitive system. We have considered a number of solutions. A remedy that I believe will solve the problem, which the committee has also approved, is to clarify the jurisdiction of the Sherman and FTC Acts and section 7 of the Clayton Act. H.R. 5235 embodies this approach, and the committee will be bringing it to the floor shortly.

H.R. 1799 provides a second important approach, procedural in nature. The basic concept is that a person who is contemplating or engaged in international joint conduct my apply to the Government for a certificate covering the conduct. Under H.R. 1799, as introduced, the Secretary of Commerce, after consultation with the Department of Justice and the Federal Trade Commission, would determine whether to grant an exemption from the antitrust laws under an expanded Webb-Pomerene Act. If the Attorney General or the Federal Trade Commission objected to granting the certificate, either could sue for injunctive relief after the certificate had been issued. No relief whatever would be available to private parties.

As more fully detailed in the committee report, many witnesses and observers believed these procedures were cumbersome, afforded illusory protection to the applicant, and, could, if misapplied, undermine competitive principles in the domestic economy. The committee, working in a bipartisan manner, has established procedures that address these concerns. As reported, title II contains a certification procedure that will let applicants know where they stand swiftly and certainly, with a minimum of bureaucratic redtape. Under the committee version, there is no need for extensive consultation among agencies and department. Decisionmaking authority lies exclusively in the Department of Justice, which should be able to provide detailed expert opinions expeditiously. Under the committee version, a certificate would be issued solely on the judgment of whether the proposed conduct would likely lead to a violation of the antitrust laws.

A certificate would largely immunize the certified conduct from antitrust attack. A certificate would protect the holder from all criminal liability, from actions for monetary relief by the Federal Government, from treble damages, and from injunctive relief in private actions based on threatened harm. The committee version leaves intact liability for single damages and injunctive liability in private cases where actual harm can be shown. In order for the certification procedures to be informal, straightforward, and expeditious, and for the Department's grants of certificate to be unreviewable, it is essential for these remedies to remain intact so that innocent competitors and consumers are not injured by actual antitrust violations.

Mr. Speaker, the suspension version of this bill is not identical to the version the committee reported. The differences are set forth in my additional views in the committee report.

Mr. Speaker, the committee amendments have the bipartisan support of the members of the committee. They are sound, workable procedures. I urge the Members of this body to support them.

I also want to commend the gentleman from New York (Mr. BINGHAM) who has been managing this measure on behalf of the Foreign Affairs Committee, and the gentleman from Washington, Mr. DON BONKER, who has for a long period of time continually urged us to bring this measure to the floor.

I particularly want to pay tribute for their long and studied efforts in this area.

I also want to thank the members of the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary because there were many prickly questions which we had to deal with, and they have all been resolved now.

Mr. Speaker, I also want to mention an individual who gave yeoman service in the committee and that is the gentleman from New Jersey (Mr. HUGHES), a member of the subcommittee.

I would urge that we adopt this resolution.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I would yield to another member of the subcommittee, the gentleman from Ohio (Mr. SEIBERLING), who has worked very diligently in this effort.

Mr. SEIBERLING. I thank the chairman for yielding.

I think this bill, as amended by the Judiciary Committee's amendment, is a distinct improvement. I commend the committee for its action, even though, as set forth in my additional views in the committee report, I feel that it is premature and that we should have waited until sufficient time has elapsed after we pass H.R. 5325, which exempts export and foreign trade from the antitrust laws. If that bill works as hoped, this bill may not be necessary.

I would like to ask the chairman a question that I know is troubling some of the Members. One of the sections of this bill, section 207, provides that anyone who receives a certificate from the Attorney General that the proposed actions do not violate the antitrust laws can henceforth not be sued for treble damages under the antitrust laws for any action that is within the scope of the facts set forth in the certificate.

The purpose of that provision, as I understand it, is to make it possible for businessmen to feel secure against the possibility that, despite the fact that the Attorney General did not feel that the proposed action would violate the antitrust laws, some court might later have a different view.

But I believe we should have the chairman's assurance that this is not an invitation to the Attorney General to be lax and give a blanket kind of certification to create an umbrella of protection from the antitrust laws.

Mr. RODINO. I want to assure the gentleman, who as a member of the subcomittee knows our one objective was to have the Department of Justice, which has overall jurisdiction in

this area of antitrust, insure that that would not be the case, that there certainly would not then be an invitation to violations.

I would also add that the chairman of the committee intends to take up H.R. 5235, which was a bill the gentleman form Illinois (Mr. McCLORY) and myself originally designed and which was joined in unanimously by the rest of the subcommittee.

Mr. SEIBERLING. I thank the chairman.

As I read the committee report, the Attorney General will be under a very strong mandate to insure that no certification is given unless he is satisfied that the proposed act does not violate the law.

Mr. RODINO. That is the reason for designating the Department of Justice rather than the Department of Commerce as the agency that would supervise reviews.

Mr. RODINO. Mr. Speaker, I yield the time I have left, 3 minutes, to the gentleman from New Jersey (Mr. HUGHES).

The SPEAKER pro tempore. Without objection, the gentleman from New Jersey (Mr. HUGHES) is recognized.

There was no objection.

Mr. HUGHES. Mr. Speaker, I want to commend the Judiciary Committee particularly the distinguished chairman of the Judiciary Committee, the gentleman from New Jersey (Mr. PETER RODINO) as well as the ranking minority member of the Judiciary Committee, the gentleman from Illinois (Mr. McCLORY), for making certain that this legislation moved through the committee expeditiously.

I also want to commend my good colleague and neighbor from Washington (DON BONKER), for his work on the Committee on Foreign Affairs, because I know this has been one of his top priorities. He has done an outstanding job in monitoring this legislation through four different committees.

I likewise want to commend the Committee on Ways and Means and the Committee on Banking, Finance and Urban Affairs for their prompt and diligent attention to this legislation.

Mr. Speaker, having been active in the negotiating process that led to this bill and having offered the amendments at the subcommittee and committee levels that were ultimately adopted, I am delighted that H.R. 1799 has reached the floor of the House.

During our information-collection process, it became clear that any certification procedure had to be swift and simple to be of practical value. The amendments that are offered here today possess those qualities. By reducing the number of Government departments and agencies with a role in the decisionmaking process from three to one, the amendments eliminate any duplicative review, the need for interagency coordination, and the possibility of conflicting governmental viewpoints.

Moreover, there can be no doubt that the Department of Justice, because of its responsibility to enforce the antitrust law, and its expertise in doing so, must be the agency with decisionmaking authority. There was unanimity in the hearing process that the Department of Justice had to have some role in the certification process to protect competitive values. The committee amendments, which transfer decisionmaking authority to the Department of Justice, do not therefore contemplate a role for the Department of Justice where there had been none.

I believe that the business community will be pleased with the committee amendments. With its great experience, the Department is in a position to make quick, accurate determinations. Because the Department of Justice will have the responsibility of making decisions, it will have to be as careful and attentive as possible and will not be free to casually dissent from the decisions of another department. The committee expects that the Department will discharge its responsibilities with a view toward the principal purpose of the legislation—to promote exports.

Finally, the procedures that the committee has recommended contain few formalities. They are designed to work as informally and expeditiously as possible. Because they contain few procedural protections for the rights of persons who would be injured by any antitrust violation, the committee amendments leave a single damage remedy to anyone who actually has been injured by an antitrust violation and an injunctive remedy to anyone who can show actual harm. If these remedies were unavailable, elaborate procedural safeguards that would likely lead to extended administrative proceedings would be necessary to make certain that domestic competitors and consumers would be unaffected by the conduct for which certification was sought.

Mr. Speaker, the procedures under consideration here today are moderate and workable. I heartily support H.R. 1799 as amended and urge my colleagues to join me in voting for it.

□ 1350

Mr. RODINO. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington (Mr. SWIFT).

(Mr. SWIFT asked and was given permission to revise and extend his remarks.)

The SPEAKER pro tempore. Without objection the gentleman from Washington (Mr. SWIFT) is recognized.

There was no objection.

Mr. SWIFT. Mr. Speaker, the current recession has jarred thousands from their jobs across our country and has shaken our economy to its foundation. The current economic crisis is in part due to the large trade imbalance that our country suffers from. It must be remembered that our first trade deficit occured in only 1971.

To be sure a large part of the foreign trade imbalace is due to our ever-increasing dependence upon imported oil. But in addition our exports have fallen far behind those of the other developed countries. The United States exports only 8 percent of its GNP, as compared with Japan's 12 percent and West Germany's 23 percent. Only 10 percent of the 250,000 manufacturing firms in the United States currently export, and or those exporting firms fewer than 1 percent account for 80 percent of our exports. This is a situation that must be addressed. Exports directly translate into jobs here in America where we desperately need them. According to the Commerce Department, there are as many as 30,000 small- to medium-sized firms that could be competitive in the export market but that simply are not competing worldwide.

The bill under consideration today, H.R. 1799, address two of the major problems faced by small companies dealing with the uncertainty of the export market; the access to capital and financing and the uncertainty of our antitrust laws. The concept of the Export Trading Company has strong support in the business community. In a recent export trade questionnaire I sent to major exporting companies in my district, 79 percent of those responding favored the creation of ETC's. Further, 81 percent favored the participation of banks in making capital and credit available to companies wishing to participate in an export trading company.

The vaguely worded Webb-Pomerene Act has been in existence since 1918, allowing U.S. firms to form associations strictly for the purpose of exporting goods without fear of antitrust prosecution. Clearly the law needs to be addressed. In the 1930's there were as many as 57 Webb-Pomerene associations accounting for some 19 percent of the total U.S. exports. By 1979, however, that number had declined to 33, accounting for less than 2 percent.

Title II of H.R. 1799 amends Webb-Pomerene to include export trading companies, and the export of goods and services. This would do much to remove the uncertainty of our antitrust laws, and would encourage the formation of export trading companies which would assist small firms to begin exporting.

It is essential that the United States increase its role in the worldwide export market—both to assist in the current domestic crisis and even more importantly to help America regain its leadership role in the world economy. I believe H.R. 1799 could help a great deal and urge my colleagues to support it. Thank you, Mr. Speaker.

Mr. RODINO. Mr. Speaker, I urge the Members to adopt this measure.

Mr. Speaker, I yield back the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield 3 minutes to the gentleman from Minnesota (Mr. FRENZEL).

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Speaker, after years of endeavor, I am delighted that the House will finally, I believe, pass the two bills on its schedule today which jointly will become the House version of a trading company bill.

This legislation, which I have supported since its conception, I think will be helpful in assisting the export needs of smaller and middle-sized companies, many of which do not have either the inclination or the capability to export at the present time.

As we have come closer and closer to the passage of this bill, I have noticed in my district increased interest in this kind of bill, and I suspect that other have experienced the same in their areas.

I welcome the passage of the bill. I think it is important that the Congress tell its constituents that we are concerned with increasing exports. This bill gives a little additional, very modest incentive to encourage exports.

The United State has stood almost alone among trading nations in its unwillingness to provide this sort of assistance to exporters. This bill is a very tiny first step, but I hope that it will lead the way to further developments of other GATT legal export incentives for American exporters.

Mr. Speaker, I do not think this bill is perfect. We have had three committees laboring to produce two bills. The result is not exactly a camel, but it is not a racehorse either.

We can stand to make many impovements. In my considered judgment, neither of these bills handle the problem nearly as well as it is handled in the other body. We have heard reference to the fact that the Attorney General will be the sole arbiter of certification. In my judgment, the Senate version, which gives that role to the Secretary of Commerce, is a far better solution and would seem to me to do much more to expand U.S. exports.

If we worry so much about our antitrust laws, we can probably arrange to see that we do not increase exports. That is, in fact what we have been doing over these past many years.

Nevertheless, I must compliment all of the committees concerned and all of the Members concerned for a good job. It is a modest beginning, but it is a very necessary beginning.

Mr. McCLORY. Mr. Speaker, may I just say, with respect to the subject of the antitrust laws, that I do not think they have been an impediment. As a matter of fact, a recent study of export disincentives published by the Department of Commerce and the Office of the Special Trade Representative expressly stated that no specific instances were found of the antitrust laws unduly restricting exports. I think it is an erroneous perception that the antitrust laws are an impediment that has been the problem, and as part of that the antitrust laws themselves have been misconstrued, misinterpreted, and misunderstood. At any rate, we are endeavoring in this measure and in the measure that the gentleman from New Jersey (Mr. RODINO) and I are sponsoring to assure that, with respect to export activities, American businessmen will be able henceforward to compete with greater confidence and freedom of action in the international marketplace. I think that is an objective on which we all can agree.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. ZABLOCKI), the chairman of the Committee on Foreign Affairs.

(Mr. ZABLOCKI asked and was given permission to revise and extend his remarks.)

Mr. ZABLOCKI. Mr. Speaker, H.R. 1799 has been brought to the floor only with concerted efforts of a number of Members of the House. It has been the persistence of Mr. BINGHAM, chairman of the Subcommittee on International Economic Policy and Trade, and Mr. BONKER together with the ranking minority member of the subcommittee, Mr. LAGOMARSINO, that has kept this bill moving over for 2 years and has finally brought it to the floor through a labyrinth of committees.

The chairman of the Judiciary Committee, Mr. RODINO, and his ranking member, Mr. MCCLORY, have been most cooperative in moving the legislation. In addition to reporting the antitrust title of H.R. 1799, they have reported companion legislation, H.R. 5235, which makes an important contribution to the efforts to facilitate the formation of export trade associations.

The third portion of the package rested with the Banking Committee. The chairman, Mr. ST GERMAIN, and the ranking member, Mr. STANTON, of Ohio took the lead on the issue in that committee, which has reported its version of the banking title of H.R. 1799, as H.R. 6016, which is also before the House today.

Mr. Speaker, this legislation is designed to facilitate the formation and financing of export trading companies and associations by creating an office within the Department of Commerce and by appropriately amending the banking and antitrust laws.

In this time of economic dislocation both domestically and internationally, I hope Members will see fit to support this effort to encourage U.S. exports and U.S. employment.

Mr. Speaker, I urge the adoption of H.R. 1799.

Mr. MCCLORY. Mr. Speaker, I commend the gentleman from Wisconsin (Mr. ZABLOCKI) and all the Members of the Foreign Affairs Committee for their major contribution in this legislative product.

Mr. Speaker, I yield back the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield 1 minute to the gentleman from Missouri (Mr. EMERSON).

(Mr. EMERSON. asked and was given permission to revise and extend his remarks.)

Mr. EMERSON. Mr. Speaker, American goods and services can be competitive with anything in the world market today if we afford our businesses the same kind of opportunities that our trading partners give their companies.

Passage of the Export Trading Company Act would give U.S. firms just such a weapon to compete more effectively in the increasingly aggressive world trade market. By allowing limited bank participation in export trading companies under strictly regulated conditions, and by providing a preclearance certification process to give participating businesses the assurance that their activities and methods of operation would not be in violation of the antitrust laws, smaller firms would be given a significant inducement to begin exporting their goods and services for the first time.

These firms have not exported until now for a variety of reasons. They are not familiar with foreign customs, language, and markets. They do not have the expertise to provide the necessary export services. Perhaps most importantly, they do not have the capacity to bear the tremendous costs and risks involved in developing overseas markets. Export trading companies will be able to help these U.S. companies over these hurdles by diversifying trade risks and achieving economies of scale in export services.

And the bottom line, Mr. Speaker, is job creation, thousands of new American jobs. In Missouri alone, the Commerce Department estimates that between 4,500 and 6,000 new jobs will be created as a direct result of passage of this legislation.

The House has before it today legislation to facilitate the formation of export trading companies. I am pleased to support this important legislation.

Mr. LAGOMARSINO. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. ROTH).

(Mr. ROTH asked and was given permission to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, all of us are concerned about our Nation's economy. We recognize that the current rate of unemployment is unacceptable and that the decline in business activity must cease.

Yet we also know that quick-fix solutions and Government bailouts will not bring about a lasting solution.

What we must do is restore economic incentives and remove inpediments that arbitrarily retard economic activi-

ty. That is exactly why this is such an important bill. It will help American business to compete in the international marketplace and will enable thousands of our Nation's businesses—who are not now exporting—to get into the export marketplace.

This month I hosted a half day conference on exports in my home State of Wisconsin. Some 300 persons attended, largely drawn from small and medium-sized businesses not currently involved in the export trade. These are exactly the types of companies that will benefit from this legislative initiative.

During our conference, our keynote speaker, Assistant Secretary of Commerce William Morris, explained to the audience the importance of the bill that we have before us today. I have long supported this bill—but what really opened my eyes to the necessity for this legislation was Secretary Morris' statement that the third largest export trading company in America today is a Japanese firm.

The benefits of exporting are well known to my colleagues here in the House. Already, some 8 percent of our Nation's $3 trillion economy is derived from our exports. Hundreds of thousands of Americans are employed in export related jobs, and an additional 32,000 jobs are created by every additional billion dollars in American exports.

Yet it is easy for us to say to American business: "There are millions of dollars in potential sales overseas—go and make those sales." International marketing is difficult and does require special skills. This is an area in which small- and medium-sized businesses lack necessary abilities—and by virtue of their size, they simply cannot afford to obtain the specialized type of information and people that they need in order to compete overseas.

By passage of this legislation, we will remove the barrier that is imposed by the fact that most of our Nation's businesses fall within the category of "small" or "medium." This bill will let those companies pool their resources, entering jointly into the worldwide market.

American products and technology are competitive with those produced anywhere else in the world. The foreign buyer wants to "buy American" because the label "Made in the U.S.A." stands for quality and reliability. Yet we cannot sit back and expect that buyers are going to come knocking at our door. Our free market system is such that our businesses must get out and make the sale, convincing the foreign buyer to buy from us, rather than from Britain, France, Japan or some other supplier. Given the choice, I am confident that many will opt for the American product—but as it stands now, all too frequently we have not even been giving the foreign purchaser the opportunity to buy American.

Through export trading companies, that situation can be corrected. This legislation can open many new doors to hundreds of thousands of America's businesses. It will help our export competitiveness—and will create tens of thousands of new jobs here in America.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. ROTH. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding.

Mr. Speaker, I rise in ardent support of this bill.

Our chairman of the Committee on Foreign Affairs has spoken of the committee's great concern. I know it, also, from the small businesses in my district. They have been warned by the Department of Justice that, when they wish to get together to make trading companies for export, there may be some antitrust legislation that forbids this kind of thing.

We are getting more and more of our small companies into export, which is so important a development—American jobs paid for with foreign currency.

The Webb-Pomerene Act of 1918 did not repair the damage that was done to our small companies in export trade.

● Mr. SMITH of New Jersey. Mr. Speaker, one of the most positive ways in which the United States can seek to correct our economic problems is by taking steps to increase our export trade. I rise in support of the Export Trading Company Act, which will provide the needed stimulous to expand our foreign markets—a key to increased national production and the creation of new private-sector jobs.

I have long believed that the expansion of small business is the key to turn the burden of unemployment in our Nation around. The small businesses of this country already provide 86 percent of the new jobs created in our economy and over half of the private sector gross national product. However, it is evident that many of these companies are in need of new markets in order to maintain present production levels—small businesses in our Nation are failing at a rate of 25,000 per year.

Based on a Department of Commerce study, we now have the opportunity to expand the market for small business production and turn these distressing figures around. It is estimated that at least 20,000 small- and medium-sized companies would export if they had access to marketing financial and informational export services. Mr. Speaker, this bill would provide these vital services.

Today, foreign trade is dominated by the largest U.S. corporations—with 1 percent of U.S. firms responsible for 80 percent of all exports. At the same time, the United States has amassed nearly $150 billion in trade deficits. In addition, the U.S. share of total world markets has declined from 15 to 12 percent since 1970.

The solution to these problems, Mr. Speaker, is to open the world market up to the most innovative and productive sector of our economy—small business. I firmly believe—once the foreign markets are tapped for smaller U.S. companies—we will see increased employment, a boom in our national output of goods and services, and we can finally make positive inroads to decrease our looming trade deficits.

Secretary of Commerce, Malcolm Baldrige, put the export trade issue in perspective when he testified before a congressional committee last year:

> We need export trading companies that provide a full range of export services to firms of any size interested in exporting. These export companies must be sufficiently capitalized to allow operations on a scale that would achieve substantial economies in selling and distributing.

Mr. Speaker, thousands of small businesses market exportable goods and services, which could easily compete in foreign markets. Most of these companies, however, have no international experience and lack of knowledge about foreign markets. Perhaps even more important, small businesses are chronically short on capital—and a large supply of capital is necessary for successful involvement for trading in foreign markets.

The bill before us today will enable small businesses throughout the Nation to expand by taking part in world trade. It will draw on the considerable resources and expertise of the U.S. banking system to increase the amount of available external financing. It would use the network of established contacts with overseas companies, knowledge of foreign markets, economic conditions, and trade regulations which are already being used by larger U.S. corporations to expand overseas production.

Mr. Speaker, I strongly join with the administration in supporting this—the first legislation in over a decade aimed at giving American business major new tools to penetrate and expand export markets abroad.●

● Mr. HAMMERSCHMIDT. Mr. Speaker, as a cosponsor of H.R. 1799, the Export Administration Amendments Act, I rise to express my strong support for this measure to encourage the development of export trading companies as middlemen to help small- and medium-sized U.S. firms sell their goods abroad. I commend my colleague, Congressman BONKER, chairman of the House Export Task Force, for his tireless efforts to insure passage of this critical bill which has been severely hampered by overlapping committee jurisdictions. I have long been enthusiastic about legislation to promote trade. Overseas trade is vital to the American economy. It is estimated that one out of eight jobs in the United States is directly dependent on exports, and that approximately $1 out of $3 of U.S. business profits is derived from international activities.

Trade is even more important for the agricultural sector, where 1 out of every 4 acres of cropland now produces for export. The continued expansion of foreign trade constitutes a major underpinning of American domestic prosperity.

Small businesses which desire to export are often sidetracked by the tremendously burdensome requirements of such an effort. Gaining an expertise in foreign markets, tax provisions, freight handling, and business customs requires an indepth study and is tremendously time consuming. Whether selling directly or through an agent abroad, the small business also has to worry about export packing, long-distance multishipper transportation, export and import licenses, lack of trustworthy credit information, paper processing, payment insurance costs, and similar followup and detail work. A small business cannot afford the large in-house international marketing staff which would be required to handle all aspects of a successful export effort.

Because of these difficulties, many small suppliers turn to export management firms to handle their foreign sales. The majority of these professional middlemen operations are too small to handle more than one or two accounts competently. They also lack the management and capital necessary to expand geographically and to establish sales offices overseas. So, even if the export management firm is the best channel for a small supplier interested in exporting, he may still be frustrated in his export efforts. Government export promotion programs have not been successful in filling this information gap or in providing the type or level of assistance necessary to aid small business exporters. Export association and trading companies currently in existence, while providing an alternative to direct exporting by small business, have been hamstrung by certain legal restrictions and ambiguities.

Congress has done very little to promote the exports of U.S. goods and services. The vast internal American market and a rich endowment of resources have enabled the Nation to remain relatively self-sufficient. Global events of the past decade, however, have led to dramatic changes. In 1970, for example, exports and imports of goods and services represented only 6.6 and 5.9 percent of U.S. GNP, respectively. By 1980, both exports and imports had grown to over 12 percent of GNP. These figures illustrate the Nation's growing interdependence on the international economy and the importance of international trade to the expansion of the American economy. If the United States is to compete effectively in world markets, it must adopt policies that promote exports without abandoning the principles of the free market system. Export growth is clearly an increasingly important part of a healthy U.S. economy, yet the United States not only does little to spur exports, it actually erects barriers to increasing exports.

Unfortunately, Federal laws and regulations limit our ability to respond effectively to these new challenges. For example, Government regulations prevent U.S. banks from offering many important trading services. In addition, antitrust uncertainties deter many U.S. firms from cooperating with other U.S. producers in their organization of export activities. They hamper American firms at a time when foreign governments are cooperating with and, in many instances, even subsidizing and directing the export efforts of their own firms. The result is that our unilateral export restrictions cost American businessmen opportunities abroad and cost American workers jobs at home.

One way in which we can do this is by facilitating the formation of trading companies. The trading company is not a new idea. It is as old as commerce itself and has enjoyed great success in other countries. In Japan, for example, the top 10 trading organizations, the Sogo Soshas, account for approximately 60 percent of Japan's imports and 50 percent of its exports. Trading companies have also played an important role in the economic growth of Many European countries. Yet, despite their historical and international success, trading companies have not flourished in the United States. The bill before us attempts to improve this situation. It makes possible the formation of American export trading companies to deliver the output of small- and medium-sized American businesses to the marketplaces of the world.

I must point out that even though U.S. exports have grown in the 1970's from 4.3 percent of our GNP to 8 percent today, we are in fact losing ground in the growing overseas markets. The U.S. share of the total world market in 1970 was 15 percent; in 1980, it was 12 percent. The U.S. share of the manufactured goods total world market has gone from 21.3 to 17.4 percent.

Every other major trading nation not only permits but encourages the formation of export trading companies or their equivalent. Only the United States has failed to allow the development of this mechanism for aiding smaller firms who either cannot or will not enter the world marketplace on their own.

It appears that the export trading company will be the major export-expanding statute that can be enacted this year. Its passage today requires the active support of all Members of Congress concerned with the balance-of-payments problem and its implications for the economic, political, and military future of the United States.●

● Mr. SOLARZ. Mr. Speaker, exports—and the need to increase our export performance—are on everyone's lips these days. U.S. merchandise trade never showed a deficit before 1971, slipped into a deficit totaling $5 billion during 1971-76, and then plunged into deficits of over $25 billion per year in 1977, 1978, 1979, 1980, and 1981. To be sure, this is in some measure due to our enormous oil bill ($79 billion in 1980), but our relative share of world markets has gone down, too.

What are the reasons for this decline, and what can be done to reverse it? Some of the change is due to relative losses in U.S. productivity and the general improvement in the economic standing of other industrialized nations. Part of the problem, though, has been the unwillingness of the Federal Government to remove disincentives to exports and to do what it can to encourage American businesses to seek overseas markets. H.R. 1799, as reported by the Committee on Foreign Affairs, would remove several of these Government-imposed limitations and give small- and medium-sized businesses the chance to sell overseas free of some of the disincentives that have made them easy pickings for their Japanese and European competitors.

Of the 250,000 businesses in this country, only about 8 percent export, and about 100 companies account for half of all our exports of manufactured goods. Studies have indicated that an additional 20,000 small- and medium-sized businesses might export profitably if given the tools and incentives to do so. These kinds of firms, though, usually have limited financial and personnel resources. They do not know how to find and evaluate foreign markets and, even if they did, they could not afford to commit the resources or secure the credit that would allow them to exploit foreign sales opportunities. Firms such as these could conceivably work together, pooling their resources to reach overseas, but the uncertain application of our antitrust laws makes such activity risky at best.

The measure before us would give export trading companies access to the kind of information about, and contacts with foreign markets that are essential for success in international trade and would provide certainty for exporters' antitrust exemptions. The struggle being waged in the House over this bill is a classic example of the need to look at traditional domestic regulatory philosophies in light of today's global economy.

EXPORT TRADING COMPANIES

The bill would encourage the formation of export trading companies—ETC's. Although there are nearly 4,000 export firms in this country, 92 percent employ less than five people and almost all limited to a single product line or geographical area. Like the small- and medium-sized businesses at which the export trading company bill is directed, these export firms have not been able to secure lines of credit

adequate for financing exports on a large scale.

ETC's would be able to offer expertise and economies of scale in financing, related credit services, market analysis, distribution channels, compliance with United States and foreign import-export regulations, advertising, accounting, overseas offices, transportation, insurance, and warehousing. They could handle a wide range of products and could offer "one-stop shopping" for the less-than-giant businesses that are the heart of the American economy. The bill would make this possible through two changes in Federal law, one substantive, the other procedural.

BANKS AND EXPORT TRADING COMPANIES

Banks have a unique ability to provide what ETC's need to succeed—international correspondent relationships, knowledge of foreign markets, extensive operations and communications systems, financing and related services, knowledge about foreign currency transactions and the kind of managerial expertise necessary for such operations as large-scale inventory control. In addition, they have an image with potential foreign purchasers that a small commercial exporter does not.

Generally, Federal law forbids banks from having equity positions in commerce. This separation, which our European and Japanese competitors are not required to observe, arises from fears about the safety of the depositors' funds. As a result, American banks are forbidden to invest in ETC's. Over the years, though, Congress has made exceptions to the banking—commerce separation that meet needs no more pressing than our need to export. Among these are laws permitting bank investment in community development corporations, small business investment companies and other entities that are not strictly "banking" in character. Bank holding companies are permitted to make small investments in nonbanking entities, but for the most part, only large banks are affiliated with holding companies.

The bill addresses this problem by permitting bank holding companies and Edge Act corporations to own and operate ETC's. The Federal Reserve Board, however, would maintain strict control over such investments. Any bank holding company on Edge Act corporation investment in an ETC would have to be approved in advance by the Fed. No ETC owned wholly or partly by a bank holding company on Edge Act corporation would be permitted to speculate in securities or commodities, and no bank could have more than 5 percent of its consolidated capital and surplus invested in ETC's.

ANTITRUST IMMUNITY

The bill before the House would make a procedural change in Federal law relating to antitrust immunity for exporters. As far back as 1916, the Federal Trade Commission recommended antitrust immunity for American businesses selling overseas. The Webb-Pomerene Act, enacted in 1918, provided antitrust immunity for export trade in goods, so long as such activity did not restrain trade or depress prices within the United States. The theory of Webb-Pomerene was to allow firms that could not act in concert in the domestic market to pool resources and assist one another in selling abroad. Webb-Pomerene got off to a good start, and by the early 1930's, Webb-Pomerene associations accounted for almost 20 percent of American exports. The heaviest representation was of relatively homogeneous exports like agricultural commodities, minerals and textiles.

Today, however, the story is far different: Webb-Pomerene associations account for only about 20 percent of our exports. Of the 150 associations created since 1918, only 33 survive (and only a few of these are substantial exporters). Probably the most significant reason for the decline of Webb-Pomerene associations was a series of challenges on antitrust grounds, brought both by the U.S. Government and by private parties.

Although Webb-Pomerene purports to provide antitrust immunity for export activities, there is no objective, certain measure upon which a company or group of companies can rely. If the Justice Department, the FTC or a private individual believes that the activities of a Webb-Pomerene association has had a forbidden domestic effect, Justice, FTC or the individual may sue the association and its members under the U.S. antitrust laws (and Justice may prosecute criminally under the Sherman Act). Years of expensive litigation can ensue—and have ensued—before the courts finally determine whether the law was violated or, as is more likely, before one side becomes exhausted and settles.

Few businesses—particularly the small- and medium-sized businesses that Webb-Pomerene is designed to help—are prepared to operate in the face of this kind of uncertainty. If we really wish to offer antitrust immunity that is worth something, certainty is needed before a firm makes the considerable investment involved in entering the export market. H.R. 1799, as reported by the Foreign Affairs Committee, would provide this kind of certainty without significantly expanding the substantive exemption enacted in 1918. Under the bill, an ETC would apply to the Commerce Department for a certificate of antitrust immunity. The application would contain a complete description of the company and its proposed exporting activities, and Commerce would consult with the traditional guardians of the antitrust laws, Justice and the FTC, before issuing a certificate. The certificate would immunize only those activities described in the application. The big difference, of course, is that exporters would know for certain that "the water's fine" before plunging in, as private parties would not have standing to challenge the activity covered by the certificate and any suit by justice to revoke it would have only prospective effect.

In addition, the bill would amend the Webb-Pomerene Act to make the antitrust exemption applicable to services as well as goods. Services constituted a relatively small portion of our exports in 1918, but by 1980, they made up one-third of total U.S. exports. This change in Webb-Pomerene would allow ETC's to provide—either solely or in concert with sales of goods—such services as accounting, banking, insurance, construction, and engineering.

THE COUNCIL FOR EXPORT TRADING COMPANIES

I am pleased to observe that this legislation already has generated considerable interest in the American commerical and financial communities. Recently, a number of agricultural, manufacturing, banking, and shipping entities joined to form the Council for Export Trading Companies, or CETC. I applaud the formation of CETC and hope that it will play an active role in assisting potential American exporters to make use of the changes that will be wrought by this legislation.

CETC has been formed for several reasons. First, many of the potential beneficiaries of the ETC legislation do not know what the bill provides and can do for them. One activity of CETC will be to provide information about the ETC legislation and the ETC concept to business people and bankers who might wish to establish or otherwise become involved in ETC's. CETC also will be providing continuing information to its members on ETC-related developments.

Second, although CETC will not be a lobbying organization, it may become involved in the legislative process by providing witnesses and information to the Congress. CETC also will have the capacity to serve as a liaison between its members and such Federal regulatory entities as the Commerce and Justice Departments, the FTC, and the various bank regulatory agencies. This will be of use not only during the development of ETC regulations by these agencies, but also in the process of filing and securing approval for ETC applications once the regulations are in place. Some of the agencies that will regulate ETC's have expressed institutional hostility toward the ETC concept. CETC will work for the creation of a regulatory environment that reflects the strong support for the ETC legislation in Congress and the American business and banking communities.

Third, and perhaps most important, CETC will be one place where potential participants in ETC's—bankers, business people, freight forwarders, and so forth—can come together.

The mere passage of this legislation will not result in the instantaneous

formation of hundreds of ETC's. The process will take time. It will involve the education of both potential ETC participants and Government regulators, the coming together of potential ETC participants, and the often tedious process of securing the approval of Federal regulatory agencies. CETC can and should fill the role of helping to carry out these tasks and making the ETC concept a reality that can give a boost to American exports.

The international trade aspects of our economic problems are many, varied, and substantial. Enactment of this bill will not solve all of them, but it will begin the process by breaking two shackles that needlessly hinder American exports.●

The SPEAKER pro tempore. All time has expired.

The question is on the motion offered by the gentleman from New York (Mr. BINGHAM) that the House suspend the rules and pass the bill, H.R. 1799, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill as amended, was passed.

The title was amended so as to read: "A bill to encourage exports by establishing in the Department of Commerce an office to promote the formation of export trade associations and export trading companies, by facilitating investment in export trading companies by certain banking institutions, and by modifying the application of the antitrust laws to certain export trade, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BINGHAM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the *bill just* passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

BANK EXPORT SERVICES ACT

Mr. ST GERMAIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6016) to permit bank holding companies and Edge Act corporations to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions, as amended.

The Clerk read as follows:

H.R. 6016

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Bank Export Services Act".

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 2. Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in *lieu thereof* "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

"(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

"(ii) The period for disapproval may be extended for such additional thirty day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

"(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(iv) The Board *may disapprove any* proposed investment only if—

"(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

"(II) the financial or managerial resources of the companies involved warrant disapproval; or

"(III) the bank holding company fails to furnish the information required under clause (iii).

"(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

"(vi) A proposed investment may be made prior to expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

"(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

"(ii) No provision of any other Federal law in effect on the date of the enactment of this paragraph relating specifically to collateral requirements shall apply with respect to any such extension of credit.

"(iii) No bank holding company which invests in an export trading company may extend credit or cause any subsidiary to extend credit to any export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(C) For purposes of this paragraph, an export trading company—

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

"(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification, including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

"(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

"(E) For purposes of this paragraph—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State and which is organized and operated exclusively for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. Any export trading company may perform such importing or other activities as are reasonably related to and incident to an export transaction, if the overall effect of such activities is to enhance the exportation of goods or services produced in the United States;

"(ii) the term 'export trade services' includes consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation (including trade documentation and freight forwarding), communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when such services are provided in order to facilitate the export of goods or services produced in the United States;

"(iii) the term 'bank holding company' shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank owning stock in a bank described in this clause that invests in an export trading company shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

"(iv) the term 'extension of credit' shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.".

BANKERS' ACCEPTANCES

SEC. 3. The seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372) is amended to read as follows:

"(7)(A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as 'institutions'), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

"(i) which grow out of transactions involving the importation or exportation of goods;

"(ii) which grow out of transactions involving the domestic shipment of goods; or

"(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

"(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this paragraph.

"(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

"(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

"(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this paragraph shall apply.

"(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Rhode Island (Mr. ST GERMAIN) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. STANTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Rhode Island (Mr. ST GERMAIN).

□ 1400

Mr. ST GERMAIN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. ST GERMAIN asked and was given permission to revise and extend his remarks.)

Mr. ST GERMAIN. Mr. Speaker, in view of the debate which has just taken place on the provisions of H.R. 1799, in the interest of time my remarks can be compressed, dealing only with the subject of possible expanded banking holding company participation in the activities of export trading companies and a brief summary of bankers' acceptances amendments.

H.R. 6016, the Bank Export Services Act was introduced by me on March 31, 1982, and cosponsored by 24 members of the Banking Committee. The bill was the subject of 3 full days of hearings with testimony from over 25 witnesses.

An amendment in the nature of a substitute was adopted by the Subcommittee on Financial Institutions, based on the comprehensive hearing record and extended consultations with the administration, the regulatory agencies and all other interested parties, by voice vote. As a result of this most deliberative process, the full committee ordered the bill reported by a 40-to-0 vote. The committee (H. Rept. 97-629) was filed on July 1.

Because of the fact that ETC legislation in both the 96th and 97th Congress has been referred to and considered by three committees (Banking, Judiciary, and Foreign Affairs), it is necessary at the outset to state the obvious that insofar as banking law provisions are concerned, H.R. 6016 with its accompanying report (H. Rept. 97-629) together with the debate now occurring on the provisions of H.R. 6016 will be the definitive legislative history of banking law amendments, notwithstanding inconsistent statement appearing elsewhere, purporting to interpret banking language.

In the 96th Congress, legislation was developed out of congressional studies of the American exporting experience. The goal of that legislation was to reduce regulatory and statutory barriers to exporting and to encourage more American businesses to become involved in international trade. The previous administration, as a part of its overall export policy, endorsed Export Trading Company (ETC) legislation similar to that now under consideration by the Congress. As evidence of widespread support for increasing this Nation's export trading capability, the House Export Task Force was established consisting of over 100 members representing every geographic region in the United States with the prime purpose of advocating legislation that supports American export trade. Three members of the House Banking Committee have served from its creation on the task force executive committee: former Banking Committee Chairman HENRY REUSS, now chairman of the Joint Economic Committee; STEPHEN L. NEAL, chairman of the Subcommittee on International Trade, Investment and Monetary Policy; and JOHN J. LAFALCE, one of the earliest House sponsors of ETC legislation.

Our committee's formal consideration of pending ETC legislation began in the 96th Congress after a series of informal discussions with representatives of the previous administration and all other interested parties, both proponents and opponents, to the pending Senate passed legislation (S. 2718). These discussions culminated in a hearing by the Subcommittee on Financial Institutions on September 30, 1980. On that occasion I expressed the subcommittee's concerns as follows:

This Subcommittee's principal concerns are the key sections of the legislation which would, for the first time in the history of this Nation, grant commercial banks the authority to make equity investments in export trading companies. This is a giant step in the expansion of banking powers, and if this legislation is enacted it will mean a substantive breach in our longstanding policy against the mixing of commerce and banking powers.

At a minimum, we should discover what the legislation will mean for: First, the traditional separation of banking and commerce; second, the safety and soundness of banking institutions, third, the competitive balance in the financial industry; and fourth, the promotion of exports.

All of us on this Subcommittee, and I suspect throughout the Congress, are solidly behind the desire to increase exports of U.S. products. I would not take a back seat to anyone in the support of export promotion, but I also believe we must make certain that we are providing real remedies, not quick fixes that may create more dislocations in the economy.

In their consideration of trade matters, both the previous and the current administration as well as the Export Task Force have focused on a number of issues, including both trade incentives and disincentives. The Banking Committee, as a result of its legislative jurisdiction, has continued to direct its attention in the 97th Congress both to the issues of providing adequate bank financing for international trade activities as well as to a review of the impact of authorizing banking organization investments in ETC's on the long-standing policy of

separating banking from commerce, discussed fully in the committee report on page 9. The traditional policy has been based on the belief that the integrity of the payments mechanism and the nature of competition for funds would be compromised if banks undertook the risks inherent in commercial and industrial ventures, or had conflicts of equity interest that involved favorable treatment for some customers, possibly bringing into serious question the banker's principal role as an impartial arbiter of credit. It should be noted at the outset that both the previous and the current administration continue to adhere to the principle of the separation of banking and commerce while supporting increased bank participation in ETC operations, including equity ownership. Deputy Secretary of the Treasury McNamar stated to the subcommittee the following:

The administration feels that your bill maintains this traditional separation by authorizing export trading companies only as subsidiaries of bank holding companies. We wholeheartedly endorse this approach, since (1) with the proper safeguards it would not impose a significantly higher risk on the banks in the holding company group; and (2) with appropriate changes in banking laws, it would not give bank-affiliated ETCS an unfair competitive advantage over other business concerns competing for access to credit.

Subsequent to Senate passage of S. 734 on April 8, 1981, a number of informal staff discussions were held by the respective house committees to which S. 734 was referred—Banking, Judiciary, and Foreign Affairs. In an effort to assist the Subcommittee on International Economic Policy and Trade on the House Foreign Affairs Committee, which evidenced a desire to move forward on companion bills to S. 734, I advised that subcommittee by letter of October 29, 1981, of the basic concepts which would ultimately govern this committee's response to the bank participation title in pending ETC legislation. That letter reaffirmed the separation principle.

In addition, the committee encouraged a series of discussions within the administration—Commerce, Treasury and the Office of Trade Representative—and between Commerce and the Federal Reserve Board in an effort to devise a realistic compromise insofar as bank investments in ETC's are concerned. As a result of the discussions and continuing action by both the Foreign Affairs and Judiciary Committees, H.R. 6016 was introduced and became the subject of subcommittee hearings on April 22, May 19, and May 25, 1982. Recognizing the importance of bankers acceptances in financing international trade and the need for modernization of the present Federal laws governing the use of bankers' acceptances, H.R. 6016 also incorporated the general scope of the provisions of H.R. 2438, introduced by Congressman DOUG BARNARD.

Following these hearings, and after consultation with members of the subcommittee, an amendment in the nature of a substitute was prepared that incorporated many of the suggestions offered by witnesses and subcommittee members. This amendment removed the authority for Edge Act corporations to invest in ETC's, at the suggestion of the Federal Reserve Board and the Treasury Department. To enable the 10,000 or so small banks in the Nation which are not affiliated with a bank holding company to participate in the operations of an ETC, authority for bankers' banks to invest in ETC's was included in the substitute. The substitute prescribed a 60-day Federal Reserve disapproval period rather than an unlimited term approval period as in the introduced bill. Refinements were also included in the substitute concerning the limits on credit extensions to ETC's, the definition of an ETC, and the provisions governing bankers' acceptances. The substitute amendment itself was amended in the subcommittee markup to provide the Federal Reserve with additional authority to prevent unsafe and unsound speculative activity by an ETC, and to exempt State-chartered, non-Federal Reserve member banks from bankers' acceptance limits contained in H.R. 6016.

Finally, in section 3 of H.R. 6016, as amended, the committee substantially liberalized provisions of the Federal Reserve Act relating to bankers' acceptances. The Federal Reserve Board in its testimony before the subcommittee acknowledged the need for liberalization as follows:

The board believes that it is both appropriate to expand the current aggregate limitation on the issuance of eligible bankers' acceptances and to apply those limits to the other entities with which member banks compete in the acceptance market. In applying the limitation on eligible bankers' acceptances to U.S. branches and agencies of foreign banks, the board believes that the appropriate measure of capital is the worldwide capital of the parent foreign bank."

The committee is indebted to the untiring efforts of our colleague, Congressman DOUG BARNARD, who advanced the cause of modernization of our present laws governing the use of bankers' acceptances by his introduction of H.R. 2438 incorporated as section 3 of H.R. 6016. Bankers' acceptances are important in the financing of international trade activities. This liberalization or deregulation supplements the bank holding company ETC provisions.

In conclusion, as I stated when the committee by a 40 to 0 vote reported to the floor H.R. 6016, "this legislation is a reasonable approach to resolving the twin concerns of insuring bank safety and soundness by limiting the breach in the separation of banking and commerce, and encouraging the flow of exports from this Nation." The concerns which the subcommittee expressed in 1980 have been met by taking the export trading company activity out of the bank and placing it into the bank holding company structure and insuring a significant regulatory presence during the application procedure and a continuing presence during the subsequent operations of those export trading company financed by bank holding companies or banker banks by the Federal Reserve Board.

Therefore, the Banking Committee believes it has succeeded in minimizing the risk of breaching the wall separating banking from commerce with the conviction that the remaining risk is clearly justified by the hope and indeed the expectancy that increased participation by bank holding companies will provide important assistance to small- and medium-sized businesses which produce goods for foreign consumption and in the process the increased international trade will produce significant economic activity and jobs domestically.

While no one can predict with certainty the effect this legislation will have on job creation, it has been conservatively estimated that the passage of export trading company legislation could, by 1985, increase employment by between 320,000 and 640,000 workers. The New England Institute estimated that the six New England States in 1980 alone generated over $10 billion in export sales, creating 135,000 jobs. The institute's survey conducted in 1981 estimated an increase of over 25 percent in sales for 57 percent of export trading company respondents with all respondents indicating increases of at least 5 percent in sales. Thus, the potential effect of export trading company legislation in New England alone, utilizing the lowest of these estimates, could mean an additional $500 million in sales, creating over 10,000 additional jobs.

I urge adoption of H.R. 6016.

□ 1410

Mr. ST GERMAIN. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. MINISH).

(Mr. MINISH asked and was given permission to revise and extend his remarks.)

Mr. MINISH. Mr. Speaker, I rise in favor of passage of the Bank Export Services Act.

Since World War II, we have all been aware of the rapid growth that took place and changes that followed. We went from a marketplace dominated by domestic manufacturers to one in which consumer demands are currently for low-cost foreign-supplied items. Our own domestic manufacturing has slowed almost to a halt.

In order to regenerate and revitalize this country's economy, it is necessary that we take steps to increase our production and to expand that production into new markets. It is my contention that with the passage of the Bank Export Services Act we will be getting

back on the track of creating new jobs for those deserving citizens of this great country.

It is well known that small- and medium-sized businesses create most of the jobs that employ our citizenry. This legislation will allow and encourage those small- and medium-sized firms to engage in business ventures in foreign markets.

This bill does not affect the ability of individuals and organizations to form export trading companies. In fact, it is the intention of this legislation to generate local and State government entities, and port authorities to innovate necessary and developmental export programs keyed to their local, State, and regional needs.

I urge my colleagues to vote favorably on this bill.

Mr. STANTON of Ohio. Mr. Speaker, I yield myself such time as I may consume.

(Mr. STANTON of Ohio asked and was given permission to revise and extend his remarks.)

Mr. STANTON of Ohio. Mr. Speaker, I join the able chairman of the committee in support for this bill. I am pleased that this bill is finally before the membership. I have found it somewhat disturbing it has languished for so long in the House for no apparent reason. It has virtually no opposition. It costs nothing, and it may have a positive effect on the U.S. export position some day. I use the word "may" advisedly.

While I am generally happy with the current form of the bill, I feel compelled to make a couple of comments. This bill has presented major U.S. banks with a significant victory. Not only do we allow them to venture into a new form of business that is potentially very profitable, but at the same time, we have bored a new hole in the wall that has traditionally separated banking from commerce. Our committee approved this weakening of the Glass-Steagall principle for one reason only—to promote exports.

Mr. Speaker, while what we do here today is very important, I am afraid there might be a tendency on the part of both the administration and Congress to rest on their laurels—waiting for a huge surge in exports that may never come. There should be no mistake about what we do here today. This bill cannot be viewed as a comprehensive new export policy, despite successive administration attempts to clothe it as such. Nor should we think that we have solved any of the other significant problems that have inhibited U.S. exports—problems such as unfair export credit competition, inadequate financing for Eximbank, lackluster export promotion services by administration agencies, inadequate enforcement of existing trade sanctions, foreign government subsidies to high technology industries, and so forth.

In my view, it would be a sad mistake if we stop here, and claim we have solved our export problem. While I think all parties deserve credit for putting together a good bill, particularly the chairman of the committee, I feel we should now redouble our efforts to address the important problems that remain—problems that are increasingly making us a second-rate trading nation.

Mr. Speaker, I see on the House floor many Members who were responsible for this, not only over a period of months but over years, in order to reach the moment we are experiencing at this time.

I especially want to compliment the chairman of our committee, who made a decision earlier in the year that this would be a priority business before our committee. It was with this emphasis that he took the legislation that was presented to him, worked very hard, and, on a nonpartisan basis, arrived at this conclusion.

So first and foremost, I think, Mr. Speaker, the chairman of our full committee deserves full support for the action that we hope we will take here later on today.

Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Ohio (Mr. WYLIE).

(Mr. WYLIE asked and was given permission to revise and extend his remarks.)

Mr. WYLIE. I thank my friend, the gentleman from Ohio (Mr. STANTON) for yielding this time to me.

Mr. Speaker, a bill very similar in concept to this one was passed by the other body earlier in the session by a vote of 93 to 0.

In the last Congress, a bill which had a similar concept passed the other body by a vote of 77 to 0. So there is much support for the idea and purpose behind this legislation.

I must say, Mr. Speaker, that the chairman has been cautions and deliberate about moving the bill through the committee, and I do feel that in the process he has helped us develop a better bill with which to go to conference.

There are a couple of places where I think the bill could be improved, but I believe it to be more important today that we expedite consideration of the bill and do urge passage of the bill in its present form.

As a result of extensive negotiations involving Members on both sides of the aisle, representatives of various departments of Government, and agencies, and representatives of banks seeking to enter the trading company business, this bill does represent a substantial improvement over the version which was originally passed so quickly by the other body.

Legislation to permit banking organizations to invest in export trading companies makes good sense, to my way of thinking. I believe that export trading companies can be useful as a means of improving the export performance of the United States.

I believe this bill can be made more workable and I expressed that thought during full committee markup.

Toward that end, I offered one amendment which was agreed to which added the words "managerial and financial resources" to the criteria which the Federal Reserve Board will use in considering applications for permits.

For the record, I believe the limitation on the ability of a bank holding company to finance an export trading company subsidiary is a restriction which is counterproductive. I would suggest that we make applicable the existing provisions of section 23A of the Federal Reserve Act to extensions of credit by a bank to the bank holding company in the case of export trade in the same manner as extensions of credit to support any other nonbanking activity. I do not believe it is necessary to establish a separate procedure governing bank financing to export trading compaines, and I am concerned that this special provision might impede bank participation in export trading companies because it will require new procedures on the part of investing bank holding companies and new interpretations by the Federal Reserve.

I feel the definitions of export trading company and export trade services to allow export trading companies more leeway to import in order to improve their ability to increase exports is desirable.

In summary, Mr. Speaker, I would emphasize that this is a good bill and I urge my colleagues to support it.

I yield back the balance of my time.

Mr. ST GERMAIN. Mr. Speaker, I yield 5 minutes to the gentleman from New York (Mr. LAFALCE), one of the original sponsors and pioneers on this legislation.

(Mr. LAFALCE asked and was given permission to revise and extend his remarks.)

Mr. LAFALCE. Mr. Speaker, today the House of Representatives has an opportunity to endorse legislation which will provide a firm basis for expanding U.S. exports. As the original House sponsor of export trading company legislation, I have welcomed rapidly growing interest in the potential of this new opportunity, and I have been gratified by the active support for trading company legislation. Over 130 of my colleagues have cosponsored my bill, H.R. 1648, and I am sure they all share my enthusiastic support for H.R. 6016, the legislation we consider today.

When I first introduced my original bill during the 96th Congress, I was motivated in large part by concern about our deteriorating balance of trade. U.S. trade balances had been in deficit since 1975, with participating large deficits in 1977 and 1978. It seemed clear at that time that poor export performance was contributing

substantially to the deficits, and that increased exports offered one of the more effective ways to remedy the problem. Those of us who looked closely at the structure of U.S. trade and the structural impediments to increased exports were struck by the success of our competitors, most notably the huge Japanese trading companies. Operating in virtually every country in the world, financed in part through strong ties to Japanese banks, and experienced in alternative trade mechanisms such as barter and three-way trading, the Japanese trading companies had grown enormously. In fact, they were becoming increasingly important as export agents for U.S.-produced goods. From the beginning, we used the Japanese trading companies as a partial model for ETC legislation, but maintained careful attention to the different business and legal framework within which our own institutions must operate.

I reintroduced export trading company legislation during the early days of this Congress, with immediate bipartisan support. It was clear that the need for stimulating exports had, if anything, increased. The economic downturn had constricted domestic markets and a stronger dollar had made our exports more expensive—and thus less competitive—on world markets. Unfortunately, those same forces remain today. While it cannot fully compensate for them, export trading legislation has become an important response to the pressures for new protectionist measures in this country.

The new administration accepted the need for export trading company legislation and endorsed my bill, H.R. 1648. The Senate moved swiftly on almost identical legislation, S. 734, and on April 8, 1981, passed it unanimously by a vote of 93 to 0. In the House, H.R. 1648 and similar bills had been referred to three separate committees, and each proceeded independently. But none could ignore the growing consensus, both in Congress and within the business community, that export trading company legislation was an idea whose time had come. Our cause was bolstered by independent studies such as the one undertaken by the New England Congressional Institute, it showed widespread support for the legislation within the business and banking communities and suggested that we would see immediate response to the new opportunities provided by the legislation. Other studies forecasted that the legislation might provide even more new jobs than originally anticipated, an important consideration during this period of escalating unemployment. Growing awareness of the legislation was immediately translated into appeals for prompt congressional action.

On March 31 of this year, the chairman of the House Banking Committee submitted his own proposal for the banking related elements of export trading company legislation. I was among the original cosponsors of his bill, H.R. 6016. The chairman's approach differed little from the banking title of my own bill, and his bill included an additional export stimulus in a provision increasing the limits on bankers' acceptances, which provide a means of guaranteeing payment for goods being shipped.

During extensive hearings this spring, the committee considered additional changes and refinements suggested by a broad cross-section of interested parties. We heard from exporters, potential exporters, existing trading companies, banks, and bank regulators. Almost every witness suggested improvements designed to make the legislation more attractive to his own organization, and it was left to the committee to sift through proposed changes. In its final form, H.R. 6016 represents careful study, cooperation, and compromise. Each element of the bill was subject to the same two tests: Will it make export trading companies more effective at meeting our export goals; and will it be workable within the legal and regulatory structures of U.S. banking.

The goal of this legislation has been clear from the beginning: Increasing exports. During the hearings, I restated my own conviction that export success, not bank profits, should be our objective. Certainly that will be the standard by which the legislation will be judged by a public eager for both the new jobs and the economic boost that exports can provide.

Export trading companies have existed in this country for years, but their growth and expansion have been severely limited by inadequate capital. Although several large corporations, including Sears and General Electric, have announced the formation of new trading company subsidiaries, their impact, at least initially, will be limited. Formation of corporate sponsored ETC's has given new impetus to our efforts to open the door to banking investments in trading companies, but I doubt we will ever see an American replica of the Japanese trading giants; it would be too inconsistent with our own business and legal traditions. I am convinced that bank investment in trading companies can contribute substantially by helping more U.S. firms to become exporters.

In addition to new capital, bank participation has the potential to improve the efficiency of trading company operations by making available the existing expertise and infrastructure possessed by large international banks. Contacts with potential customers, familiarity with export financing and currency transactions, and better means of evaluating the creditworthiness of foreign customers will all be facilitated by their worldwide networks of offices and affiliates. Because we felt that exploiting the recognition and goodwill associated with existing banking activities would stimulate exports, the committee chose to permit holding companies to use their own names for trading company affiliates.

In other cases, regional banks may choose to build upon their relationships with local business in order to encourage new export activities. Risk, uncertainty, and lack of familiarity with export procedures have all discouraged many small and medium sized firms from developing export markets, but a well run trading company could substantially reduce those hurdles. By linking with existing trading companies, regional banks can provide the necessary expertise and financing to make exporting attractive to many more firms. In addition, because of their familiarity with the financial and management resources of local firms regional banks are uniquely equipped to help small companies meet the challenges of export-related growth.

In addressing the direct objective of increasing U.S. exports, H.R. 6016 also represents an important step in the modernization of banking law. Authorization for bank investment in trading companies constitutes a significant relaxation of the historic legal separation of banking and commerce, and the committee carefully reviewed the terms and conditions of such investments. This legislation is designed to preserve necessary safeguards for the safety and soundness of our Nation's banking institutions, while permitting bank holding companies to make better use of their substantial resources.

On a case-by-case basis, the committee relies on the substantial supervisory and regulatory resources of the Federal Reserve System to protect banks against the effects of unsound practices by their parent holding companies. At the same time, the committee also wished to insure that those resources not be applied to blocking legitimate investments, a possibility introduced by the Fed's open scepticism about the legislation. Accordingly, H.R. 6016 directs that the Fed must be advised in writing at least 60 days in advance of a bank holding company's proposed investment in an ETC and provides for an additional 30 days review period under defined circumstances. Absent a formal notice of disapproval from the Fed, the holding company is authorized to go ahead with the investment. Specific grounds for disapproval are outlined in the legislation, and it was the committee's intention that Fed review be confined to legitimate questions of bank safety, not unrelated activities of either the holding company or its other subsidiaries. The legislation itself protects against excessive risk by limiting direct investment to 5 percent of the holding company's consolidated capital and surplus; further, loans from the holding company and all its other subsidiaries may not total more than

10 percent of the holding company's consolidated capital and surplus.

The bill approved by the Banking Committee defines export trading companies as organizations operated exclusively for the purpose of exporting or facilitating the export of goods and services made in the United States. Our choice of the word "exclusively" reflects a deliberate intention to focus the activities of ETC's on exports rather than imports, but H.R. 6016 clearly authorizes such importing activities as are necessary to facilitate exports and promote ETC operations in foreign countries. ETC's are also authorized to make product modifications necessary to prepare U.S.-made goods for foreign markets and to take title to goods being exported. An important element of trading company legislation is the explicit recognition of services as a distinct class of exports. In fact, a growing proportion of our export revenues comes from the services sector.

In its final form, H.R. 6016 represents the culmination of a long evolutionary process, a process marked by long discussion and careful study. We have fine-tuned my original proposal, and the resulting legislation will be an important stimulus to our economy. Thousands of U.S. companies will now have access to a complete range of export assistance, and many will find new prosperity in foreign markets. My own involvement with this legislation has been very satisfying, and I am pleased with the results of our efforts. The Banking Committee can be proud of our success in drafting such excellent legislation. I encourage the full House to support us today.

□ 1420

Mr. STANTON of Ohio. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Connecticut (Mr. MCKINNEY).

(Mr. MCKINNEY asked and was given permission to revise and extend his remarks.)

Mr. MCKINNEY. Mr. Speaker, today the House has an opportunity to take a major step to expand further foreign markets for American businesses. The Bank Export Services Act, H.R. 6016, is an important weapon in the international trade battle and helps U.S. businessmen compete more effectively abroad.

We have heard much said recently about the intrusion of foreign companies in the U.S. economy. The influx of imported cars, foreign steel, imported electronics, and a variety of other products have heightened the awarenesses of the American people to the rules of the international trading game. A number of bills have been introduced which are openly protectionist in nature and which cry for further retaliation from our trading partners. That approach, in my opinion, serves no positive purpose and, in fact, is contradictory to our free market philosophy.

Export trading companies have long been a part of American commerce. However, there has been traditionally a veil drawn between banking and commerce which has prevented banks from becoming involved in export trading services. When this separation was imposed in the mid-19 century, it addressed business conditions which existed at that time. Today's conditions require a new set of laws and regulations. I believe H.R. 6016 is a well-drafted proposal to meet the current needs of American bankers and businessmen.

I commend Chairman ST GERMAIN, the Banking Committee ranking member, Mr. STANTON, and Mr. WYLIE, ranking member of the Financial Institutions Subcommittee, for their efforts in bringing this bill to the floor. The legislation represents a bipartisan effort to permit our businessmen access to the talents and capital of our banking community to compete more effectively in international markets.

I am aware that a great deal of interest exists in my part of the country for this legislation. Small- and medium-sized bankers view this as an opportunity to expand into a natural market for their services and one which the major banks are not necessarily able to cover. I have been contacted by many smaller businessmen who are eager to have access to the information about foreign markets that export trading companies can offer.

Under the protections that H.R. 6016 contains, it is logical that a marriage of bankers' expertise and businesses seeking new markets be consummated. In developing this bill, our committee carefully considered potential abuses and risks. We then included prohibitions against speculation and other abusive activities. There are adequate safeguards in this bill to assure that bank holding companies and bankers' banks which become involved in export trading companies will not have their traditional safety and soundness jeopardized.

The Bank Export Services Act will help expand U.S. exports. It is a positive step to meet the challenge for international markets. We should not retreat behind protectionist barriers which will lead only to more retaliation abroad. We have the opportunity to permit American businesses more freedom to compete in the world market using the same methods as our trading partners do. The administration wants this bill: American business wants this bill. I urge my colleagues to vote for H.R. 6016 as a message to the world, and the American business community that we mean business but in the American way.

Mr. STANTON of Ohio. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Delaware (Mr. EVANS), whose leadership has been greatly appreciated on this legislation.

(Mr. EVANS of Delaware asked and was given permission to revise and extend his remarks.)

Mr. EVANS of Delaware. Mr. Speaker, I appreciate the comments of my friend, the gentleman from Ohio (Mr. STANTON).

Mr. SPEAKER, American companies must be given the tools to compete effectively with our trading partners. Legislation on the House floor today recognizes this important need.

Over the past two decades, the U.S. share of world trade has been steadily declining. This is particularly unfortunate since it is clear that many American products could be very competitive in the world market. At stake are thousands upon thousands of jobs for American men and women.

Our Nation's small- and medium-sized companies are the ones which create most of this country's jobs, and it is also these firms whose foreign sales are now impeded by a lack of operating capital and financing. Legislation to facilitate the development of export trading companies would do a great deal to correct this situation, resulting in a significant increase in American jobs and an expanded U.S. share of total world markets.

I urge my colleagues who will participate in the conference on export trading company legislation to complete their work as quickly as possible so that this valuable export tool will be available to provide a much-needed increase in the number of American jobs.

Mr. STANTON of Ohio. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Minnesota (Mr. FRENZEL), a former member of our committee.

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Speaker, I spoke a moment ago on the companion bill which will, along with the bill that is now before us, become the House version of an Export Trading Companies Act, and noted at the time that it was not a perfect bill. In fact, it, or they, substantially lack some of the advantages of the bill in the Senate. I think those statements are even more appropriate regarding this bill produced by our Banking Committee.

One of the problems here is that the Committee on Banking has apparently reversed the rather strong statement of the Committee on Foreign Relations with respect to import activities. Almost everyone in the trading business knows that imports often serve as a great enhancement to export stimulation. I think this bill generally does not provide the flexibility that exists in the Senate version. Flexibility in import activity is something that should be improved in the conference when it is held. Obviously, these ETC's need maximum flexibility to perform in the most effective way.

There is also a little more regulation in this bill than most people who are interested in expanding trade would like to see. I am nervous about over-regulation, particularly by the Fed in this instance.

Nevertheless, I do not want to be ungrateful for a splendid effort on the part of the Banking Committee. Something is better than nothing.

I only hope that, having had a taste of providing a very modest incentive for exports that in the future the committee will see that it has acted with undue restraint, and will then proceed to expand export opportunities in the future.

Mr. STANTON of Ohio. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. PATTERSON).

□ 1430

(Mr. PATTERSON asked and was given permission to revise and extend his remarks.)

Mr. PATTERSON. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of the Bank Export Services Act, H.R. 6016. This bill represents a strong step by the Congress in the area of export promotion. There is little doubt that there are many small- and medium-sized firms throughout the country that have the products to sell overseas but not the means to do so. The costs are simply too high for a small company to go it alone. Meanwhile, our trade deficits continue to grow. H.R. 1799 and H.R. 6016 represent a significant first step in exploiting the untapped export potential of the United States.

The excuse that abnormally high prices for imported oil used to explain away and rationalize our huge trade deficits no longer holds. The plain truth is that we are being outdone by our competitors. The Japanese as everyone knows have been particularly successful. Much of their success is based upon the proficiency of export trading companies. It is time for the United States to take hold of this concept and run with it.

At the present time, 1 percent of our companies produce 80 percent of our exports. Small- and medium-sized companies, although often possessing the desire and productive capacity to export, simply do not have the financial means and expertise to do so. An export trading company would provide the whole range of export services from financing to marketing studies to actually selling products overseas. The result, increased sales for U.S. companies and a significant increase in employment.

Banking concerns will play a key role in the formation of ETC's because they will be permitted to invest in these companies. Banks with international expertise already have many of the support facilities, foreign business contacts and marketing know-how which are prerequisities for successful exporting. Additionally, their domestic commercial activities bring them into constant contact with companies which to date have ignored export markets yet produce goods and services which are highly marketable abroad. U.S. banking institutions are vital to the success of this legislation. I urge my colleagues to vote for H.R. 6016. American business and labor will be the winners.

Mr. ST GERMAIN. Mr. Speaker, I yield such time as he may consume to the gentleman from Minnesota (Mr. VENTO).

(Mr. VENTO asked and was given permission to revise and extend his remarks.)

Mr. VENTO. Mr. Speaker, I rise in support of the legislation.

Mr. Speaker, approval of H.R. 6016, the Bank Export Services Act, is an important step toward increasing the exportation of goods manufactured in the United States. Successful implementation of this legislation will increase demand for American products and provide new employment opportunities for American workers.

At a time of the highest unemployment since the depression, it is critically important that the Federal Government facilitate job creation. However, it is my concern that the amount of credit needed to finance substantially increased exports not come at the expense of the credit-sensitive industries already established in our economy. The Federal Reserve should recognize that the legislation will increase the demand for credit, and it should move to accommodate this new credit demand without reducing the supply of credit to other sectors of the economy. Specifically, the Federal Reserve should accommodate this new demand for credit and if necessary institute monetary policy changes which will expand the availability of credit.

It is necessary for Congress to encourage exports which will result in increased employment opportunities for American workers. For this to be successful, there will be an increased demand for credit by export trading companies and American manufacturers of exported products. However, it would be poor public policy for the Federal Government to encourage American exports and encourage an increased demand for credit at the expense of the American workers employed in other credit sensitive industries.

Mr. ST GERMAIN. Mr. Speaker, I yield 4 minutes to the gentleman from Georgia (Mr. BARNARD).

Mr. STANTON of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. BARNARD).

(Mr. BARNARD asked and was given permission to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, will the gentleman yield?

Mr. BARNARD. I yield to the gentleman from Arkansas.

(Mr. ALEXANDER asked and was given permission to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, one of the most commanding needs in our Nation today is to encourage small- and medium-sized businesses to export, and those needs are met in part by this bill.

In that connection, Mr. Speaker, I note with satisfaction that on page 9 of the report accompanying H.R. 6016 it is stated that this bill in no way affects the ability of such organizations as agricultural cooperatives to organize or invest in export trading companies. However, I would like to clarify some language in the bill which could possibly be construed as prejudicial to agricultural cooperatives.

On page 4, lines 10 and 11, and again on page 7, lines 5 and 6, the bill states that export trading companies—and I quote—"may not engage in manufacturing or agricultural production activities."

The National Council of Farmer Cooperatives has written me asking if the agriculture production prohibition does not cast some uncertainty on the eligibility of farmer cooperatives as trading company partners.

Mr. Speaker, I will ask the chairman, in his judgment, is this the case?

Mr. ST GERMAIN. Mr. Speaker, will the gentleman yield to me for a reply?

Mr. BARNARD. I yield to the gentleman from Rhode Island.

Mr. ST GERMAIN. Absolutely and very definitely not. H.R. 6016 says an export trading company may not engage in agricultural production. The activities of an agricultural cooperative which wants to organize or invest in an ETC are immaterial. Even if an agricultural cooperative were engaged in extensive farming operations, it would still be completely eligible, under the terms of H.R. 6016, to organize or invest in export trading companies.

Mr. ALEXANDER. Mr. Speaker, I thank the gentleman from Rhode Island (Mr. ST GERMAIN) and I thank the gentleman from Georgia (Mr. BARNARD) for yielding.

Mr. BARNARD. Mr. Speaker, this is a significant day for those of us in the House, for today we begin the long-overdue process of adapting our financial system to the changing marketplace.

Much of the credit for this beginning must go to the distinguished chairman of the Banking Committee, Mr. ST GERMAIN. He has had the vision to see the urgent need for this bill, and to shape the legislation to meet the actual competitive needs of our financial institution. The chairman has worked with all of us on the committee, and the result is a truly nonpartisan package that will significantly enhance our export capability.

Export trading companies will be major vehicles for presenting Ameri-

can goods and services to the world markets. Although American companies have always exported, we have not had any real policy to encourage exports. Instead, we have often inadvertently made it more difficult to export. As a result, our overseas sales, while significant, have not been as great as they should be. Many commercial opportunities that would have provided jobs for the unemployed, new industries for blighted areas, and incentives to innovate because there was no vehicle for smaller firms to use to increase foreign sales.

Export trading companies will fill this void. They will be able to provide services to the smaller- and medium-sized exporter that are currently available only to huge corporations. Utilizing the expertise and foreign presence of banks, they will be able to package export services ranging from marketing surveys to finding buyers, from arranging shipping to product modification, and from financing payment to arranging barter transactions. In all cases, these are services that presently are available only to those exporters who are able to devote the time and money to search them out.

I am proud to say that H.R. 6016 contains a provision that I originally advanced, expanding the limitations on bankers acceptances. Since Congress created the U.S. acceptance market in 1913, they have become an essential part of financing trade. However, the law this body passed almost 70 years ago have not been significantly revised since then.

One of the major revisions has been to place all banks, foreign and domestic, on an equal footing and under the same legal requirements. This means that a foreign-owned bank doing business in this country will not have an unfair advantage in this market, as they too will be covered by this law. For the first time, they will also be subject to the limitations of this act, which will be based on their worldwide capital and surplus, just as it is for a domestic bank.

Under the language of this bill, acceptances will for the first time be available to smaller and medium-sized exporters. In the past, the restrictions on the amount of acceptances that could be issued limited them to only the largest exporters, but in this legislation, we have increased the amount that can be outstanding. As a result, smaller firms will, for the first time, have access to this low-cost form of export finance.

Even more importantly, for the first time, we are allowing smaller banks to offer their customers access to export financing. They will be able to both purchase shares of any acceptances issued in behalf of their larger customers, and to originate them for their smaller customers through the mechanism of acceptances.

This committee has worked long and hard to come up with the best way to give these banks and exporters access to this type of trade financing, and has allowed them to be participated through other banks. We have been very specific about how these acceptances should be written, and have come to the conclusion that only the name of the issuing bank needs to be placed on the acceptance.

We do not believe that it is necessary for the names of the participating banks to be placed on the face of the document because they do not have the responsibility to repay an acceptance presented by a secondary market buyer.

However, there is an unqualified obligation to repay the originating bank. In standard practice in areas of the country where participations in accept-ances have been sold for some time, the participation agreeement states that if the acceptance is not liquidated by the bank's customer, the account the participating bank holds with the originator may be debited for the amount of the participation without further notice. This practice was instituted after lengthy consultations with two of the major accounting firms in the country.

As such, the issuing bank is substituting the risk of the participant for that of the borrower, and in theory, the participant is at risk regardless of the actions of the borrower. In practice, since almost all acceptances are secured by an actual transaction, there is minimal risk to both the participant and the issuing bank.

This is similar to the procedure that has been followed for many years in the case of a standby letter of credit that is participated to another bank. The participating bank does not have to issue a separate letter of credit to the originating bank, but it does have the legal obligation to cover the debt up to the extent of its participation if the borrower is unable to pay. This has been standard banking practice for some time, and participations in acceptances will follow a similar pattern.

In no case should standard credit judgement not be exercised in the case of an acceptance on the part of either the originating bank or any participating banks, but when such judgment is used, these will be among the highest quality financial instruments available to banks.

Acceptances are the safest form of trade finance, since almost all of them are secured by an actual transaction. In virtually all acceptances currently outstanding, title to the goods in the underlying transaction are held by the issuing bank until the credit is liquidated. Financial markets rate acceptances as among the highest quality financial instruments issued, and they are highly sought after in the secondary market. I am delighted that this low-cost, low-risk form of trade finance will now be available to all exporters, regardless of size.

Mr. Speaker, this legislation is a major beginning not only in expanding foreign trade, but in modernizing our system of financial institutions. However, much else remains to be done in the months ahead. For far too long, banks and thrifts have been unable to give their customers the services they need and desire because of outdated laws of another era.

As a result, literally billions of dollars are going into unregulated funds and investments. It is not a matter of our banks not being willing to change, but a matter of laws that limit them, or force them into unregulated forms of services at a greater risk to the customer. I expect that in the coming months and years we will continue to examine these limitations, and will revise them to meet today's needs and tomorrow's opportunities.

This act, H.R. 6016, is a major step to both increasing foreign trade and to allowing financial institutions to compete, and I urge my colleagues to support it.

Mr. ST GERMAIN. Mr. Speaker, will the gentleman yield to me?

Mr. BARNARD. I yield to the gentleman from Rhode Island.

Mr. ST GERMAIN. Mr. Speaker, I want to thank the gentleman from Georgia (Mr. BARNARD) for his statement, and I would like to take this opportunity to express my deep appreciation to the many members of the committee who worked so diligently with me and to our staffs who worked together in a very harmonious manner to bring this legislation to the floor.

It is truly a bipartisan piece of legislation, and I want to publicly thank our ranking minority member, the gentleman from Ohio (Mr. STANTON), the gentleman from Ohio (Mr. WYLIE), and the gentleman from Connecticut (Mr. MCKINNEY) and their staff for their cooperation and assistance in seeing to it that we come up with a piece of legislation that is, indeed, a product of all of the members of our committee on both sides of the aisle. I feel that this is legislation, as the gentleman has just stated, which is a precursor to some additional legislation that will modernize our financial institutions, both the thrifts and the commercials, to deal with the problems of the future. It will deal not only with the problems of the future but will serve the needs of the Nation.

Mr. Speaker, I thank the gentleman for yielding.

Mr. STANTON of Ohio. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Indiana (Mr. MYERS).

Mr. MYERS. Mr. Speaker, I thank my colleague for yielding me this time.

On page 4 of the bill the committee has spelled out the requirements and under what conditions disapproval might be necessary, and among those is undue concentration of resources. The section goes ahead and spells out just what those conditions might be.

But the section deals with decreased or unfair competition. This concerns

me very much. It seems to me like we are giving a lot of discretion to the Federal Reserve Board and are not really spelling out just what is unfair competition or decreased competition.

□ 1440

The gentleman from Ohio (Mr. WYLIE) in his additional views has talked somewhat about this. Did the committee express concern about granting so much authority to the Fed without spelling out just what is unfair competition?

Mr. WYLIE. Mr. Speaker, will the gentleman yield?

Mr. STANTON of Ohio. I yield to the gentleman from Ohio.

Mr. WYLIE. The gentleman has raised a good point. It is one that I tried to address a little while ago in my statement.

On page 3 of the bill it says—

The Board may disapprove any proposed investment only if—(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest: (II) the financial or managerial resources of the companies involved warrant disapproval . . .

There is a combination of provisions there which do confer rather broad authority and broad discretion upon the Federal Reserve.

The gentleman from New York (Mr. LAFALCE), I might say, and the gentleman from Connecticut (Mr. MCKINNEY) raised this issue during committee deliberations that the Fed might refuse to approve applications or impose excessive regulations upon export trading companies.

On page 11 of the report, it is stated that—

With the safeguards enumerated in the bill and *with prompt Federal Reserve review* of proposed investments, ETC's can be established that will provide these benefits to the public. . . . (Emphasis mine.)

It is clear that the Federal Reserve is expected to review applications promptly, and I believe it is clear from the legislative history that Congress means these applications to be approved unless a condition warranting disapproval exists.

What we did not want to do, and the gentleman has touched on this good point, is to make the review process so difficult that an applicant will have to spend all of its time in going through the application process and not be able to devote its efforts to promoting exports.

Mr. MYERS. Exactly.

Mr. WYLIE. We want to give them a chance to demonstrate that they can be an effective export trading company.

So, as I say, I offered one amendment which was approved during the deliberations in the committee, and withheld two more, on behalf of which I will be prepared to work during conference, which embody the gentleman's concern, that the Federal Reserve should not be delegated plenary plications at its discretion, or based upon the length of a foot of the Chairman of the Federal Reserve Board.

I think it is very important that we do not hamstring export trading companies with unnecessary regulations so that they cannot go ahead and perform the function which this legislation was designed to facilitate.

Mr. MYERS. The gentleman states in his additional views that the Fed asked for broader authority than the committee gave them in this bill, but yet it seems like in this one section, decreased or unfair competition, there is no spelling out, not a definition of what is a decrease of competition or unfair competition. It concerns me very much that you are leaving a rather large door open for Fed discretion as to which ones they will apply this rule to, and even have different rules under different cases.

I have been watching Fed for a number of years and I know there is a growing concern among other Members that we are giving Fed a lot more authority than possibly the intent of Congress ever was.

So I am pleased that the gentleman is going to offer this amendment in conference, and I wish him well with it, because I think this is something we need.

Mr. WYLIE. I thank the gentleman for raising the point and we will try to address that in conference, I assure the gentleman.

Mr. ST GERMAIN. Mr. Speaker, will the gentleman yield to me on that point?

Mr. STANTON of Ohio. In the remaining time, I do yield to the gentleman from Rhode Island (Mr. ST GERMAIN).

Mr. ST GERMAIN. On the point just being discussed, indeed we do not expand the power of the Fed. As a matter of fact, we said to the Fed. "You cannot just take all of the time in the World to make a decision, but you have to make a decision within a stated period of time."

We make it very clear, however, that the provisions of change H.R. 6016 apply only to ETC's. The Bank Holding Company Act, and present procedures thereunder in so far as other activities of bank holding companies are concerned are in no way affected.

The concerns of the gentleman are the concerns of our committee as well.

Mr. MYERS. Will the gentleman yield?

Mr. STANTON of Ohio. I yield to the gentleman from Indiana.

Mr. MYERS. I do not disagree with the gentleman but yet the Board, within 60 days, could arbitrarily say an applicant would be unfair competition an would not have to justify it because you leave a rather large door and you do not define it.

Mr. ST GERMAIN. Absent the change, the Board could conceivably hold the application indefinitely before reaching a determination. the Fed "you must act within a period."

Very frankly, the way it is w in my discussions with Chairma Volcker, he made it clear that he happy with this because it in fac 6016 is a restriction of existin powers. Indeed, it is more liber is designed to promote and to the formation of ETC's.

Mr. MYERS. If the gentlema yield one more time, what concer is the Board, after this bill be law, can make the same decisio only thing we are doing is expe that same decision and we m within 60 days instead of 6 ye the gentleman gave the example.

But they could still come t same conclusion.

Really, what protection does t plicant have, what recourse dc have once the Board has arbi made a decision?

Mr. ST GERMAIN. He has re to the courts as is the present ca

Mr. STANTON of Ohio. Let m since the gentleman brings up cellent point and time is limite the point is one with which the mittee has been very familiar, gentleman from Ohio (Mr. V said, the minute we get to conf we will push this point a litt more.

I appreciate the gentleman's bution.

Mr. MYERS. I think that we a rulemaking power right here ar policymaking should be done he the Board should be the implem of the policy and the rules. T what I am concerned about.

Mr. BARNARD. Mr. Speake the gentleman yield?

Mr. STANTON of Ohio. I yi the gentleman from Georgia.

Mr. BARNARD. The guidelin already in place that the Fed u far as unfair competitive practic concerned. I am sure that they apply in this case as they a apply in other unfair competitiv ations.

● Mr. McDADE. Mr. Speaker, I support of this much needed l tion. At a time when America' formance in the international market is not good, this bill wil return us to the levels of tra once maintained, by making it pc for small- and medium-sized busi to enter into overseas trade.

The economic prowess of smal ness is well-known and well-docu ed. Small business is highly in tive, competitive, a great cost and the best creator of emplo opportunities. We need to unleas economic force on foreign mark order to improve our export pe ance. This market also provides cellent opportunity for expansi this important sector of the eco

Small- and medium-sized firm a lengthy series of obstacles if th

For a small firm, it is prohibitively expensive to make arrangements for financing, licenses and permits, shipping and to solve all the other problems which come with exporting. Export trading companies serve businesses by making these arrangements. A small firm working with an export trading company can sell their products overseas almost as easily as selling in the next State.

Unfortunately, current law imposes a number of restrictions which severely limit the ability of export trading companies to function. In particular, there are antitrust laws and banking regulations which have created disadvantages for American firms. Our European and Japanese counterparts have fully developed the export trading company concept, which leaves our businesses at a disadvantage.

H.R. 6016 corrects this problem. It would terminate Federal regulations that prohibit Federal banking institutions from investing in export trading companies. This would enable these companies to strengthen their financial capacity and obtain the "international expertise" they need. Additionally, the bill resolves antitrust concerns which have arisen. By enacting this measure, export trading companies will be able to flourish and provide an important stimulus to our economy.

Mr. Speaker, H.R. 6016 is an important step toward the development of export trade for smaller firms. It is well drafted legislation which protects against abuses or possible harm to the banking community. We need to enact this proposal to encourage business growth in this time of economic hardship. I urge its approval by the House.●

● Mr. WORTLEY. Mr. Speaker, I rise in strong support of the bill to expand export trading companies.

A modern export policy is essential to the economic well being of the United States. Our major trading partners have known this for quite some time and have used the device of export trading companies to enhance their positions in the world marketplace. It is not too late for the United States to profit by their example, but time is of the essence.

That is why this legislation is so important. Throughout the hearing process, it became evident that the United States could improve its position as a major trading nation if it had certain tools, mainly the ability to broaden its base for the sale of goods abroad. Only a small percentage of American manufacturing firms are involved in exports at the present time, and an even smaller number of them account for almost 85 percent of U.S. exports.

It is difficult for many small and medium size businesses to enter the export market because they do not have access to adequate financing, market analysis, documentation, and after sale services readily available to them bundled together in a one-stop facility.

The potential for increasing the number of American jobs through exports is enormous. At a time when unemployment in the United States is at an unconscionable level, surely we must do all that we can to open every avenue for increased employment. Chase Econometrics estimated that export trading companies could increase employment by as much as 640,000 jobs by 1985.

Bank participation in export trading companies is an absolute must. Not allowing bankers' banks and bank holding companies to become export partners would be a terrible mistake. The legislation reported favorably by the House Banking Committee has been carefully crafted to take into account the traditional separation of banking and commerce. The bill maintains the necessary safety and soundness principles to which our financial institutions must subscribe.

It is a good bill and it merits the favorable consideration of every Member of this body who is concerned about American jobs and the balance of trade.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Rhode Island (Mr. ST GERMAIN) that the House suspend the rules and pass the bill, H.R. 6016, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to permit bank holding companies and bankers' banks to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ST GERMAIN. Mr. Speaker, I aks unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous material, on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

FACILITATING FORMATION AND OPERATION OF EXPORT TRADING COMPANIES AND ASSOCIATIONS

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that the Committee on Banking, Finance, and Urban Affairs, the Committee on Foreign Affairs, and the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 834) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

Mr. KRAMER. Mr. Speaker, reserving the right to object, I would like to pose an inquiry to the gentleman from Wisconsin (Mr. ZABLOCKI).

Could the gentleman tell us whether or not he has consulted with the leadership and the whip on this side of the aisle with respect to this request?

Mr. ZABLOCKI. Mr. Speaker, will the gentleman yield?

Mr. KRAMER. I yield to the gentleman from Wisconsin.

Mr. ZABLOCKI. Mr. Speaker, it is my understanding that this request has the agreement of the leadership on both sides of the aisle.

Mr. KRAMER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXPORT TRADING COMPANIES

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1981".

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

(2) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

(4) export trade intermediaries, such as trading companies, can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per-unit cost to producers;

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant portion of potential United States exporters);

(6) State and local government activities which initiate, facilitate, or expand export of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(7) the development of export trading companies in the United States has been

hampered by insular business attitudes and by Government regulations; and

(8) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services, particularly by small, medium-size, and minority concerns, by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods produced in the United States or services produced in the United States, and exported, or in the course of being exported, from the United States to any foreign nation;

(2) the term "goods produced in the United States" means tangible property manufactured, produced, grown, or extracted in the United States, the cost of the imported raw materials and components thereof shall not exceed 50 per centum of the sales price;

(3) the term "services produced in the United States" includes, but is not limited to accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services, not less than 50 per centum of the sales or billings of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(5) the term "export trading company" means a company, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for the purposes of—

(A) exporting goods or services produced in the United States; and

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(7) the term "Secretary" means the Secretary of Commerce; and

(8) the term "company" means any corporation, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization.

(b) The Secretary is authorized, by regulation, to further define such terms consistent with this section.

FUNCTIONS OF THE SECRETARY OF COMMERCE

SEC. 104. The Secretary shall promote and encourage the formation and operation of export trading companies by providing information and advice to interested persons and by facilitating contact between producers of exportable goods and services and firms offering export trade services.

OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS, BANK HOLDING COMPANIES, AND INTERNATIONAL BANKING CORPORATIONS

SEC. 105. (a) For the purpose of this section—

(1) the term "banking organization" means any State bank, national bank, Federal savings bank, bankers' bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(2) the term "State bank" means any bank or bankers' bank which is incorporated under the laws of any State, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands;

(3) the term "State member bank" means any State bank which is a member of the Federal Reserve System;

(4) the term "State nonmember insured bank" means any State bank which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(5) the term "bankers' bank" means any bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks (except to the extent directors' qualifying shares are required by law) and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors, or employees;

(6) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(7) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(8) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(9) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank or any bank located in the District of Columbia;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank; and

(D) the Federal Home Loan Bank Board with respect to a Federal savings bank.

In any situation where the banking organization holding or making an investment in an export trading company is a subsidiary of another banking organization which is subject to the jurisdiction of another agency, and some form of agency approval or notification is required, such approval or notification need only be obtained from or made to, as the case may be, the appropriate Federal banking agency for the banking organization making or holding the investment in the export trading company;

(10) the term "capital and surplus" shall be defined by the appropriate Federal banking agency;

(11) an "affiliate" of a banking organization has the same meaning as an "affiliate" of a member bank under section 2 of the Banking Act of 1933, and, with respect to a bank holding company, includes any bank or other subsidiary of such company, the term "subsidiary" has the same meaning as in section 2 of the Bank Holding Company Act of 1956;

(12) the terms "control" and "subsidiary" shall have the same meanings assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956, except that for purpose of the Export Trading Company Act of 1981, the determination of control as provided in section 2(a)(2) of the Bank Holding Company Act of 1956 shall be made by the appropriate Federal banking agency; and

(13) for the purposes of this section, the term "export trading company" means a company which does business under the laws of the United States or any State and which is exclusively engaged in activities related to international trade, whether operated for profit or as a nonprofit organization: *Provided, however,* That any such company must also either meet the definition of export trading company in section 103(a)(5) of this Act, or be organized and operated principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this Act: *Provided further,* That any such company, for purposes of this section, (A) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that its banking organization investor may do so under applicable Federal and State banking law and regulations, and (B) may not engage in manufacturing or agricultural production activities.

(b)(1) Notwithstanding any prohibition, restriction, limitation, condition, or requirement of any law applicable only to banking organizations, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency, if such investment does not cause an export trading company to become a subsidiary of the investing banking organization; and

(B) make investments in excess of an aggregate amount of $10,000,000 in one or more export trading companies, or make any investment or take any other action which causes an export trading company to become a subsidiary of the investing banking organization or which will cause more than 50 per centum of the voting stock of an export trading company to be owned or controlled by banking organizations, only with the prior approval of the appropriate Federal banking agency.

Any banking organization which makes an investment under authority of clause (A) of the preceding sentence shall promptly notify the appropriate Federal banking agency of such investment and shall file such reports on such investment as such agency may require. If, after receipt of any such notification, the appropriate Federal banking agency determines that the export trading company is a subsidiary of the investing banking organization, it shall have authority to disapprove the investment or impose conditions on such investment under authority of subsection (d). In furtherance of such authority, the appropriate Federal banking agency, after notice and opportunity for hearing, may require divestiture of any voting stock or other evidences of ownership previously acquired, and may impose

conditions necessary for the termination of any controlling relationship.

(2) If a banking organization proposes to make any investment or engage in any activity included within the following two subparagraphs, it must give the appropriate Federal banking agency ninety days prior written notice before it makes such investment or engages in such activity:

(A) any additional investment in an export trading company subsidiary; or

(B) the engagement by any export trading company subsidiary in any line of activity, including specifically the taking of title to goods, wares, merchandise, or commodities, if such activity was not disclosed in any prior application for approval.

During the notification period provided under this paragraph, the appropriate Federal banking agency may, by written notice, disapprove the proposed investment or activity or impose conditions on such investment or activity under authority of subsection (d). An additional investment or activity covered by this paragraph may be made or engaged in, as the case may be, prior to the expiration of the notification period if the appropriate Federal banking agency issues written notice of its intent not to disapprove.

(3) In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1)(B) of this subsection within a period of one hundred and twenty days, which period begins on the date the application has been accepted for processing by the appropriate Federal banking agency, the application shall be deemed to have been granted. In the event of the failure of the appropriate Federal banking agency either to disapprove or to impose conditions on any investment or activity subject to the prior notification requirements of paragraph (2) of this subsection within the ninety-day period provided therein, such period beginning on the date the notification has been received by the appropriate Federal banking agency, such investment or activity may be made or engaged in, as the case may be, any time after the expiration of such period.

(c) The following limitations apply to export trading companies and the investments in such companies by banking organizations:

(1) The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership except where a majority of the outstanding voting stock or other evidences of ownership of the company is owned or controlled by such banking organization.

(2) The total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of credit by the banking organization and its direct and indirect subsidiaries to such export trading company shall not exceed 10 per centum of the banking organization's capital and surplus.

(3) A banking organization that owns any voting stock or other evidences of ownership of an export trading company may be required, by the appropriate Federal banking agency, to terminate its ownership or shall be subject to limitations or conditions which may be imposed by such agency, if the agency determines that the company has taken positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of its business operations.

(4) No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(d)(1) In the case of every application under subsection (b)(1)(B) of this section, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns (with special emphasis on small, medium-size, and minority concerns), and to improving United States competitiveness in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under subsection (b)(1)(B) if it finds that the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(2) In approving any application submitted under subsection (b)(1)(B), the appropriate Federal banking agency may impose such conditions which, under the circumstances of such case, it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices. With respect to the taking of title to goods, wares, merchandise, or commodities by any export trading company subsidiary of a banking organization, the appropriate Federal banking agencies may, by order, regulation, or guidelines, establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. In particular, the appropriate Federal banking agencies may establish inventory-to-capital ratios, based on the capital of the export trading company subsidiary, for those circumstances in which the export trading company subsidiary may bear a market risk on inventory held.

(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal banking agency must give due consideration to the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company, and the identity, character, and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions or set standards for the taking of title which unnecessarily disadvantage, restrict, or limit export trading companies in competing in world markets or in achieving the purposes of section 102 of this Act. In particular, in setting standards for the taking of title under the preceding paragraph (2), the appropriate Federal banking agencies shall give special weight to the need to take title in certain kinds of trade transactions, such as international barter transactions.

(4) Notwithstanding any other provision of this Act, the appropriate Federal banking agency may, whenever it has reasonable cause to believe that the ownership or control of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the banking organization, after due notice and opportunity for hearing, to terminate (within one hundred and twenty days or such longer period as the appropriate Federal banking agency may direct in unusual circumstances) its investment in the export trading company.

(5) On or before two years after enactment of this Act, the appropriate Federal banking agencies shall jointly report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives their recommendations with respect to the implementation of this section, their recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-size, and minority business concerns, and their recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

(6) The appropriate Federal banking agency may, by regulation or order, exempt from the collateral requirements of section 23A of the Federal Reserve Act any loan or extension of credit made by a national or State bank to an export trading company affiliate if the agency determines such exemption is necessary to finance the operating expenses of an affiliated export trading company and does not expose the bank to undue financial risks. This paragraph does not apply to bank affiliates currently exempt from the requirements of section 23A.

(e)(1) Any party aggrieved by an order of an appropriate Federal banking agency under this section may obtain a review of such order in the United States court of appeals within any circuit wherein such organization has its principal place of business, or in the court of appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the order was based. The court shall set aside any order found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (D) without observance of procedure required by law.

(2) Except for violations of subsection (b)(3) of this section, the court shall remand for further consideration by the appropriate Federal banking agency any order set aside solely for procedural errors and may remand for further consideration by the appropriate Federal banking agency any order set aside for substantive errors. Upon remand, the appropriate Federal banking agency shall have no more than sixty days from date of issuance of the court's order to cure any procedural error or reconsider its prior order. If the agency fails to act within this period, the application or other matter subject to review shall be deemed to have been granted as a matter of law.

(f)(1) The appropriate Federal banking agencies are authorized and empowered to issue such rules, regulations, and orders, to require such reports, to delegate such functions, and to conduct such examinations of

subsidiary export trading companies, as each of them may deem necessary in order to perform their respective duties and functions under this section and to administer and carry out the provisions and purposes of this section and prevent evasions thereof.

(2) In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this section may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency defined in that Act.

(g) Nothing in this section shall at any time prevent any State from adopting a law prohibiting banks chartered under the laws of such State from investing in export trading companies or applying conditions, limitations, or restrictions on investments by banks chartered under the laws of such State in export trading companies in addition to any conditions, limitations, or restrictions provided under this section.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 106. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other private creditors to export trading companies as defined in section 103(5) of this Act, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

TITLE II—EXPORT TRADE ASSOCIATIONS

SHORT TITLE

SEC. 201. This title may be cited as the "Export Trade Association Act of 1981".

FINDINGS; DECLARATION OF PURPOSE

SEC. 202. (a) FINDINGS.—The Congress finds and declares that—

(1) the exports of the American economy are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating $1 out of every $7 of total United States goods produced;

(2) exports will play an even larger role in the United States economy in the future in the face of severe competition from foreign government-owned and subsidized commercial entities;

(3) between 1968 and 1977 the United States share of total world exports fell from 19 per centum to 13 per centum;

(4) trade deficits contribute to the decline of the dollar on international currency markets, fueling inflation at home;

(5) service-related industries are vital to the well being of the American economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and represent a small but rapidly rising percentage of United States international trade;

(6) agriculture constitutes the foundation of the economy of the United States and will continue to be a leading sector in United States export growth;

(7) small and medium-sized firms are prime beneficiaries of joint exporting, through pooling of technical expertise, help in achieving economies of scale, and assistance in competing effectively in foreign markets; and

(8) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports.

(b) PURPOSE.—It is the purpose of this title to encourage American exports by directing the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

DEFINITIONS

SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61-66) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

"SECTION 1. DEFINITIONS.

"As used in this Act—

"(1) EXPORT TRADE.—The term 'export trade' means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported from the United States or any territory thereof to any foreign nation.

"(2) SERVICE.—The term 'service' means intangible economic output, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, informational and any other data-based services, and communication services.

"(3) EXPORT TRADE ACTIVITIES.—The term 'export trade activities' means activities or agreements in the course of export trade.

"(4) METHODS OF OPERATION.—The term 'methods of operation' means the methods by which an association or export trading company conducts or proposes to conduct export trade.

"(5) TRADE WITHIN THE UNITED STATES.—The term 'trade within the United States' whenever used in this Act means trade or commerce among the several States or in any territory of the United States, or in the District of Columbia, or between any such territory and another, or between any such territory or territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"(6) ASSOCIATION.—The term 'association' means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations, whether operated for profit or organized as nonprofit corporations, which are created under and exist pursuant to the laws of any State or of the United States.

"(7) EXPORT TRADING COMPANY.—The term 'export trading company' means an export trading company as defined in section 103(5) of the Export Trading Company Act of 1981.

"(8) ANTITRUST LAWS.—The term 'antitrust laws' means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12), sections 5 and 6 of the Federal Trade Commission Act (15 U.S.C. 45, 46), and any State antitrust or unfair competition law.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(10) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(11) COMMISSION.—The term 'Commission' means the Federal Trade Commission.".

ANTITRUST EXEMPTION

SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61-66) is amended by striking out section 2 (15 U.S.C. 62) and inserting in lieu thereof the following:

"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

"(a) ELIGIBILITY.—The export trade, export trade activities, and methods of operation of any association, entered into for the sole purpose of engaging in export trade, and engaged in or proposed to be engaged in such export trade, and the export trade, export trade activities and methods of operation of any export trading company, that—

"(1) serve to preserve or promote export trade;

"(2) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association or export trading company;

"(3) do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(4) do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(5) do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members; and

"(6) do not constitute trade or commerce in the licensing of patents, technology, trademarks, or know-how, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or export trading company or its members

shall, when certified according to the procedures set forth in this Act, be eligible for the exemption provided in subsection (b).

"(b) EXEMPTION.—An association or an export trading company and its members are exempt from the operation of the antitrust laws with respect to their export trade, export trade activities and methods of operation that are specified in a certificate issued according to the procedures set forth in this Act, carried out in conformity with the provisions, terms, and conditions prescribed in such certificate and engaged in during the period in which such certificate is in effect. The subsequent revocation in whole or in part of such certificate shall not render an association or its members or an export trading company or its members liable under the antitrust laws for such export trade, export trade activities, or methods of operation engaged in during such period.

"(c) DISAGREEMENT OF ATTORNEY GENERAL OR COMMISSION.—Whenever, pursuant to section 4(b)(1) of this Act, the Attorney General or the Commission has formally advised the Secretary of disagreement with his determination to issue a proposed certificate, and the Secretary has nonetheless issued such proposed certificate or an amended certificate, the exemption provided by this section shall not be effective

until thirty days after the issuance of such certificate.".

AMENDMENT OF SECTION 3

SEC. 205. The Webb-Pomerene Act (15 U.S.C. 61-66) is amended—

(1) by inserting immediately before section 3 (15 U.S.C. 63) the following:

"SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCIATIONS PERMITTED.".

and

(2) by striking out "SEC. 3. That nothing" in section 3 and inserting in lieu thereof "Nothing".

ADMINISTRATION; ENFORCEMENT; REPORTS

SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act (15 U.S.C. 61-66) is amended by striking out sections 4 and 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the following sections:

"SEC. 4. CERTIFICATION.

"(a) PROCEDURE FOR APPLICATION.—Any association or export trading company seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

"(1) The name of the association or export trading company.

"(2) The location of all of the offices or places of business of the association or export trading company in the United States and aoroad.

"(3) The names and addresses of all of the officers, stockholders, and members of the association or export trading company.

"(4) A copy of the certificate or articles of incorporation and bylaws, if the association or export trading company is a corporation; or a copy of the articles, partnership, joint venture, or other agreement or contract under which the association or export trading company conducts or proposes to conduct its export trade activities, or contract of association, if the association or export trading company is unincorporated.

"(5) A description of the goods, wares, merchandise, or services which the association or export trading company or their members export or propose to export.

"(6) A description of the domestic and international conditions, circumstances, and factors which show that the association or export trading company and its activities will serve a specified need in promoting the export trade of the described goods, wares, merchandise, or services.

"(7) The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods, wares, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

"(8) The names of all countries where export trade in the described goods, wares, merchandise, or services is conducted or proposed to be conducted by or through the association or export trading company.

"(9) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association or export trading company; the relation of the association or export trading company to other associations, corporations, partnerships, and individuals; and competition or potential competition, and effects of the association or export trading company thereon. The Secretary may request such information as part of an initial application or as a necessary supplement thereto. The Secretary may not request information under this paragraph which is not reasonably available to the person making application or which is not necessary for certification of the prospective association or export trading company.

"(b) ISSUANCE OF CERTIFICATE.—

"(1) NINETY-DAY PERIOD.—The Secretary shall issue a certificate to an association or export trading company within ninety days after receiving the application for certification or necessary supplement thereto if the Secretary, after consultation with the Attorney General and Commission, determines that the association and, its export trade, export trade activities and methods of operation, or export trading company, and its export trade, export trade activities and methods of operation meet the requirements of section 2 of this Act and will serve a specified need in promoting the export trade of the goods, wares, merchandise, or services described in the application for certification. The certificate shall specify the permissible export trade, export trade activities and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary deems necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that he proposes to issue. The Attorney General or Commission may, within fifteen days thereafter, give written notice to the Secretary of an intent to offer advice on the determination. The Attorney General or Commission may, after giving such written notice and within forty-five days of the time the Secretary has delivered a copy of a proposed certificate, formally advise the Secretary and the petitioning association or export trading company of disagreement with the Secretary's determination. The Secretary shall not issue any certificate prior to the expiration of such forty-five-day period unless he has (A) received no notice of intent to offer advice by the Attorney General or the Commission within fifteen days after delivering a copy of a proposed certificate, or (B) received any noticed formal advice of disagreement or written confirmation that no formal disagreement will be transmitted from the Attorney General and the Commission. After the forty-five-day period or, if no notice of intent to offer advice has been given, after the fifteen-day period, the Secretary shall either issue the proposed certificate, issue an amended certificate, or deny the application. Upon agreement of the applicant, the Secretary may delay taking action for not more than thirty additional days after the forty-five-day period. Before offering advice on a proposed certification, the Attorney General and Commission shall consult in an effort to avoid, wherever possible, having both agencies offer advice on any application.

"(2) EXPEDITED CERTIFICATION.—In those instances where the temporary nature of the export trade activities, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of the association or export trading company which have a significant impact on its export trade, make the ninety-day period for application approval described in paragraph (1) of this subsection, or an amended application approval as provided in subsection (c) of this section, impractical for the association or export trading company seeking certification, such association or export trading company may request and may receive expedited action on its application for certification.

"(3) AUTOMATIC CERTIFICATION FOR EXISTING ASSOCIATIONS.—Any association registered with the Federal Trade Commission under this Act as of January 19, 1981, may file with the Secretary an application for automatic certification of any export trade, export trade activities, and methods of operation in which it was engaged prior to enactment of the Export Trade Association Act of 1981. Any such application must be filed within one hundred and eighty days after the date of enactment of such Act and shall be acted upon by the Secretary in accordance with the procedures provided by this section. The Secretary shall issue to the association a certificate specifying the permissible export trade, export trade activities, and methods of operation that he determines are shown by the application (including any necessary supplement thereto), on its face, to be eligible for certification under this Act, and including any terms and conditions the Secretary deems necessary to comply with the requirements of section 2(a) of this Act, unless the Secretary possesses information clearly indicating that the requirements of section 2(a) are not met.

"(4) APPEAL OF DETERMINATION.—If the Secretary determines not to issue a certificate to an association or export trading company which has submitted an application for certification, or for an amendment of a certificate, then he shall—

"(A) notify the association or export trading company of his determination and the reasons for his determination, and

"(B) upon request made by the association or export trading company, afford it an opportunity for reconsideration with respect to that determination.

"(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF CERTIFICATE.—Whenever there is a material change in the membership, export trade activities, or methods of operation, of an association or export trading company then it shall report such change to the Secretary and may apply to the Secretary for an amendment of its certificate. Any application for an amendment to a certificate shall set forth the requested amendment of the certificate and the reasons for the requested amendment. Any request for the amendment of a certificate shall be treated in the same manner as an original application for a certificate.

"(d) AMENDMENT OR REVOCATION OF CERTIFICATE BY SECRETARY.—

"(1) The Secretary on his own initiative shall, upon a determination that the export trade, export trade activities or methods of operation of an association or export trading company no longer comply with the requirements of section 2 of this Act, revoke its certificate or make such amendments as may be necessary to comply with the requirements of such section.

"(2) Prior to revoking or amending a certificate, the Secretary shall—

"(A) notify the holder of the certificate in writing of the facts or conduct which may warrant the action, and

"(B) provide the holder of the certificate an opportunity for such hearing as may be appropriate in the circumstances.

"(3) Before revoking or amending a certificate pursuant to this subsection the Secretary may in his discretion provide the holder of the certificate an opportunity to achieve compliance within a reasonable period of time not to exceed ninety days, except that nothing in this paragraph shall affect any action under section 4(e) of this Act.

"(e) ACTION FOR REVOCATION OF CERTIFICATE BY ATTORNEY GENERAL OR COMMISSION.—

"(1) The Attorney General or the Commission may bring an action against an association or export trading company or its members to invalidate, in whole or in part, its certificate on the ground that the export trade, export trade activities or methods of operation of the association or export trading company fail or have failed to meet the requirements of section 2 of this Act. Except in the case of an action brought during the period before an antitrust exemption becomes effective, as provided for in section 2(c), the Attorney General or Commission shall notify any association or export trading company or member thereof, against which it intends to bring an action for revocation thirty days in advance, as to its intent to file an action under this subsection. The district court shall consider any issues presented in any such action de novo and if it finds that the requirements of section 2 are not met, it shall issue an order revoking the certificate or any other order necessary to effectuate the purposes of this Act and the requirements of section 2.

"(2) Any action brought under this subsection shall be considered an action described in section 1337 of title 28, United States Code. Pending any such action which was brought during the period any exemption is held in abeyance pursuant to section 2(c) of this Act, the court may make such temporary restraining order or prohibition as shall be deemed just in the premises.

"(3) No person other than the Attorney General or Commission shall have standing to bring an action against an association or export trading company or their respective members for failure of the association or export trading company or their respective export trade, export trade activities or methods of operation to meet the eligibility requirements of section 2 of this Act.

"(f) COMPLIANCE WITH OTHER LAWS.—Each association and each export trading company and any subsidiary thereof shall comply with United States export control laws pertaining to the export or transshipment of any goods on the Commodity Control List to controlled countries. Such laws shall be complied with before actual shipment.

"(g) JUDICIAL REVIEW.—Final orders of the Secretary under this section shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code.

"SEC. 5. GUIDELINES.

"(a) INITIAL PROPOSED GUIDELINES.—Within ninety days after the enactment of the Export Trade Association Act of 1981, the Secretary, after consultation with the Attorney General, and the Commission shall publish proposed guidelines for purposes of determining whether export trade, export trade activities and methods of operation of an association or export trading company will meet the requirements of section 2 of this Act.

"(b) PUBLIC COMMENT PERIOD.—Following publication of the proposed guidelines, and any proposed revision of guidelines, interested parties shall have thirty days to comment on the proposed guidelines. The Secretary shall review the comments and, after consultation with the Attorney General, and Commission, publish final guidelines within thirty days after the last day on which comments may be made under the preceding sentence.

"(c) PERIODIC REVISION.—After publication of the final guidelines, the Secretary shall periodically review the guidelines and, after consultation with the Attorney General, and the Commission, propose revisions as needed.

"(d) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—The promulgation of guidelines under this section shall not be considered rulemaking for purposes of subchapter II of chapter 5 of title 5, United States Code, and section 553 of such title shall not apply to their promulgation.

"SEC. 6. ANNUAL REPORTS.

"Every certified association or export trading company shall submit to the Secretary an annual report, in such form and at such time as he may require, which report updates where necessary the information described by section 4(a) of this Act.

"SEC. 7. CONFIDENTIALITY OF APPLICATION AND ANNUAL REPORT INFORMATION.

"(a) GENERAL RULE.—Portions of applications made under section 4, including amendments to such applications, and annual reports made under section 6 that contain trade secrets or confidential business or financial information, the disclosure of which would harm the competitive position of the person submitting such information shall be confidential, and, except as authorized by this section, no officer or employee, or former officer or employee, of the United States shall disclose any such confidential information, obtained by him in any manner in connection with his service as such an officer or employee.

"(b) DISCLOSURE TO ATTORNEY GENERAL OR COMMISSION.—Whenever the Secretary believes that an applicant may be eligible for a certificate, or has issued a certificate to an association or export trading company, he shall promptly make available all materials filed by the applicant, association or export trading company, including applications and supplements thereto, reports of material changes, applications for amendments and annual reports, and information derived therefrom, to the Attorney General or Commission, or any employee or officer thereof, for official use in connection with an investigation or judicial or administrative proceeding under this Act or the antitrust laws to which the United States or the Commission is or may be a party. Such information may only be disclosed by the Secretary upon a prior certification that the information will be maintained in confidence and will only be used for such official law enforcement purposes.

"SEC. 8. MODIFICATION OF ASSOCIATION TO COMPLY WITH UNITED STATES OBLIGATIONS.

"At such time as the United States undertakes binding international obligations by treaty or statute, to the extent that the operations of any export trade association or export trading company, certified under this Act, are inconsistent with such international obligations, the Secretary may require the association or export trading company to modify its respective operations, and in so doing afford the association or export trading company a reasonable opportunity to comply therewith, so as to be consistent with such international obligations.

"SEC. 9. REGULATIONS.

"The Secretary, after consultation with the Attorney General and the Commission, shall promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

"SEC. 10. TASK FORCE STUDY.

"Seven years after the date of enactment of the Export Trade Association Act of 1981, the President shall appoint, by and with the advice and consent of the Senate, a task force to examine the effect of the operation of this Act on domestic competition and on United States international trade and to recommend either continuation, revision, or termination of the Webb-Pomerene Act. The task force shall have one year to conduct its study and to make its recommendations to the President.".

(b) REDESIGNATION OF SECTION 6.—The Act is amended—

(1) by striking out "SEC. 6." in section 6 (15 U.S.C. 66), and

(2) by inserting immediately before such section the following:

"SEC. 11. SHORT TITLE.".

EFFECTIVE DATE WITH REGARD TO EXISTING ASSOCIATIONS

SEC. 207. (a) GENERAL RULE.—The amendments to the Webb-Pomerene Act set forth in sections 203, 204, 205, and 206 of this Act shall become effective with regard to an existing association described in subsection (b) only at such time as the association may elect to be certified pursuant to subsection (c).

(b) ELECTION TO CONTINUE UNDER PRIOR LAW.—Application of the antitrust laws to any association which as of January 1, 1981, had filed with the Commission the information specified under section 5 of the Webb-Pomerene Act as in effect immediately prior to the date of enactment of this Act shall continue to be governed by the standards set forth in that Act, unless such association elects to seek certification under subsection (c).

(c) ELECTION TO APPLY FOR CERTIFICATION.—Any association to which subsection (b) applies may, at any time after the effective date of this Act, file an application for certification with the Secretary containing the information set forth in section 4(a) of the Webb-Pomerene Act, as amended by section 206 of this Act. The Secretary shall consider and act upon such application in the manner provided in section 4(b) of the Webb-Pomerene Act, as amended by section 206 of this Act. The association filing an application pursuant to this subsection shall continue to be subject to subsection (b) of this section until the Secretary issues a certificate and such certificate has been accepted by the association; the association must decide whether or not to accept such certificate no later than thirty days after the Secretary's determination with respect thereto has become final.

MOTION OFFERED BY MR. ZABLOCKI

Mr. ZABLOCKI. Mr. Speaker, I offer a motion. It is to amend S. 734 with the text of section 1 through 4 and title II of H.R. 1799 and the text of H.R. 6016.

The Clerk read as follows:

Mr. ZABLOCKI Moves to strike out all after the enacting clause of the Senate bill (S. 734) and to insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as "The Export Trading Company Act of 1982".

TITLE I—GENERAL PROVISIONS

FINDINGS; DECLARATION OF PURPOSE

SEC. 101. (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 percent of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency mar-

kets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(6) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(7) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(8) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(9) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(10) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by permitting bank holding companies and bankers' banks to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade.

DEFINITIONS

SEC. 102. For purposes of this section and sections 101 and 103 of this Act—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services;

(3) the term "export trade services" includes international market research, advertising, marketing, insurance, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means any person, corporation, partnership, association, or similar organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "export trade association" means an association engaged solely in export trade which is exempt from the antitrust laws under the Webb-Pomerene Act;

(6) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(7) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 103. The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

TITLE II—BANK EXPORT SERVICES

SHORT TITLE

SEC. 201 This title may be cited as the "Bank Export Services Act".

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 202. Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

"(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

"(ii) The period for disapproval may be extended for such additional thirty day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

"(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(iv) The Board may disapprove any proposed investment only if—

"(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

"(II) the financial or managerial resources of the companies involved warrant disapproval; or

"(III) the bank holding company fails to furnish the information required under clause (iii).

"(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

"(vi) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

"(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

"(ii) No provision of any other Federal law in effect on the date of the enactment of this paragraph relating specifically to collateral requirements shall apply with respect to any such extension of credit.

"(iii) No bank holding company which invests in an export trading company may extend credit or cause any subsidiary to extend credit to any export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(C) For purposes of this paragraph, an export trading company—

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

"(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification, including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

"(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

"(E) For purposes of this paragraph—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State and which is organized and operated

exclusively for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. Any export trading company may perform such importing or other activities as are reasonably related to and incident to an export transaction, if the overall effect of such activities is to enhance the exportation of goods or services produced in the United States;

"(ii) the term 'export trade services' includes consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation (including trade documentation and freight forwarding), communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when such services are provided in order to facilitate the export of goods or services produced in the United States;

"(iii) the term 'bank holding company' shall include a bank which (I) is organized solely to do business with other banks and their officers, directors or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

"(iv) the term 'extension of credit' shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.".

BANKERS' ACCEPTANCES

SEC. 203. The seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372) is amended to read as follows:

"(7)(A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as 'institutions'), accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

"(i) which grow out of transactions involving the importation or exportation of goods;

"(ii) which grow out of transactions involving the domestic shipment of goods; or

"(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

"(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participating share in such acceptances, authorized for such institution under this paragraph.

"(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

"(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

"(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this paragrapn shall apply.

"(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction.".

TITLE III—EXPORT TRADE CERTIFICATES OF REVIEW

EXPORT TRADE PROMOTION DUTIES OF ATTORNEY GENERAL

SEC. 301. To promote and encourage export trade, the Attorney General may issue certificates of review. The Secretary of Commerce, in carrying out his responsibilities to promote the export of goods and services of the United States, may advise and assist persons with respect to applying for certificates of review.

APPLICATION FOR ISSUANCE OF CERTIFICATE OF REVIEW

SEC. 302. (a) To request the issuance of a certificate of review, a person shall submit to the Secretary of Commerce or the Attorney General a written application which—

(1) specifies conduct limited to export trade, and

(2) is in a form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule issued under section 311.

Each application received by the Secretary of Commerce shall be forwarded, not later than 7 days after receipt, to the Attorney General.

(b)(1) With respect to each application submitted under subsection (a), the Attorney General shall publish in the Federal Register notice that a certificate of review has been requested, the identity of each person requesting the certificate, and a description of the conduct with respect to which the certificate is requested. The notice shall be so published promptly, but not later than 10 days, after the application is received by the Attorney General.

(2) The Attorney General may not issue the certificate until the expiration of the 30-day period beginning on the date the application is received by the Attorney General.

ISSUANCE OF CERTIFICATE

SEC. 303. (a) The attorney General shall issue a certificate of review to an applicant for the certificate if the application for the certificate satisfies the requirements of section 302, unless the Attorney General determines under subsection (b) that the conduct specified in the application is likely to result in a violation of the antitrust laws.

(b)(1) Not later than 60 days after the Attorney General receives an application under section 302, the Attorney General shall determine whether the conduct specified in the application is likely to result in a violation of the antitrust laws, except that if before the expiration of the 60-day period the Attorney General requests that the applicant submit additional information, the Attorney General shall make the determination not later than the expiration of the 60-day period, or of the 30-day period beginning on the date the additional information is submitted, whichever period ends later.

(2) Unless the Attorney General determines that the conduct specified in the application is likely to result in a violation of the antitrust laws, the Attorney General shall immediately issue a certificate of review to the applicant. If the Attorney General determines that the conduct specified in the application is likely to result in a violation of the antitrust laws, the Attorney General shall promptly transmit to the applicant a statement of the determination and the reasons in support of the determination.

(c) If the Attorney General denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of all documents submitted by the applicant in connection with the issuance of the certificate, the Attorney General shall return to the applicant, not later than 30 days after receiving the request, the documents and all copies of the documents available to the Attorney General, except to the extent that the information contained in a document has been made available to the public.

(d) The Attorney General shall specify in each certificate of review issued under this section—

(1) the conduct, including activities and methods of operation, to which the certificate applies,

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions applicable to the conduct.

(e) A certificate of review obtained by fraud is void *ab initio*.

REPORTING REQUIREMENT; AMENDMENT OF CERTIFICATE

(1) SEC. 304. (a) any person who receives a certificate of review—

(1) shall promptly report to the Attorney General any change relevant to the matters specified under section 303(d) in the certificate, and

(2) may submit to the Attorney General an application to amend the certificate to reflect the fact or effect of the change on the conduct specified in the certificate.

(b) For purposes of section 302 and section 303, an application for an amendment to a certificate of review shall be deemed to be

an application for the issuance of a certificate of review, except that the effective date of the amendment shall be the date on which the application for the amendment is submitted to the Attorney General.

MODIFICATION OR REVOCATION OF CERTIFICATE

SEC. 305. (a) If at any time the Attorney General determines that the conduct engaged in under a certificate of review violates or is likely to result in a violation of the antitrust laws, the Attorney General shall give written notice of the determination to the person to whom the certificate was issued. The notice shall include a statement of the reasons in support of the determination. In the 30-day period beginning 30 days after the notice is given, the Attorney General shall modify or revoke the certificate, as may be appropriate.

(b) The person to whom the affected certificate was issued may bring an action in any appropriate district court of the United States to set aside the determination made under subsection (a) on the ground that the determination is erroneous.

JUDICIAL REVIEW; ADMISSIBILITY

SEC. 306. (a) Except as provided in section 305(b), no determination made by the Attorney General with respect to the issuance, amendment, or revocation of a certificate of review shall be subject to judicial review.

(b) No determination made by the Attorney General with respect to the issuance, amendment, or revocation of a certificate of review shall be admissible in evidence in any administrative or judicial proceeding in support of any claim under the antitrust laws.

PROTECTION CONFERRED BY CERTIFICATE OF REVIEW

SEC. 307. (a) No person to whom a certificate of review is issued shall be subject to a criminal action for a violation of the antitrust laws or a violation of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(b) No person to whom a certificate of review is issued shall be liable for damages in a civil action brought by the Attorney General for a violation of the antitrust laws or of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(c)(1) No person to whom a certificate of review is issued shall be liable for damages exceeding actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for a violation of the antitrust laws or of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(2) If, with respect to any claim under section 4 of the Clayton Act (15 U.S.C. 15) brought against the person, the court finds that—

(A) the conduct alleged to violate the antitrust laws does not violate the antitrust laws,

(B) the conduct is conduct specified in a certificate of review, and

(C) the certificate of review was in effect at the time the conduct occurred,

the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(d) No person to whom a certificate of review is issued shall be liable under section 16 of the Clayton Act (15 U.S.C. 26), or any State antitrust law similar to such section, with respect to threatened loss or damage by violation of the antitrust laws or of any State law similar to the antitrust laws if the threatened loss or damage arises from conduct specified in the certificate of review and if the certificate is in effect at the time the conduct occurs.

INJUNCTIVE RELIEF

SEC. 308. Except as provided in section 307(d), a certificate of review shall have no legal effect on the authority of a court to grant equitable relief in an action for a violation of the antitrust laws brought against the person to whom the certificate is issued. In granting the relief, the court shall have jurisdiction to modify or revoke the certificate of review, as may be appropriate.

DISCLOSURE OF INFORMATION

SEC. 309. (a) Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5, United States Code.

(b)(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Attorney General deems disclosure of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule issued under section 311 permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

DESCRIPTIVE GUIDELINES

SEC. 310. (a) To promote greater certainty regarding the application of the antitrust laws to export trade, the Attorney General may issue guidelines—

(1) describing specific types of conduct with respect to which the Attorney General has made, or would make, determinations under section 303 and section 305, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Section 553 of title 5, United States Code, shall not apply to the issuance of guidelines under subsection (a).

ISSUANCE OF RULES

SEC. 311. Not later than 120 days after the date of the enactment of this Act, the Attorney General shall issue rules to carry out this title.

DEFINITIONS

SEC. 312. For purposes of this title—

(1) the term "antitrust laws" shall have the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that the term shall include section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition,

(2) the term "Attorney General" means the Attorney General of the United States or his designee,

(3) the term "certificate of review" means a certificate issued by the Attorney General under section 303,

(4) the term "export trade" means the export of goods or services from the United States to foreign nations, and

(5) the term "State" shall have the meaning given it in section 4G of the Clayton Act (15 U.S.C. 15g).

EFFECTIVE DATES

SEC. 313. (a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(b) Section 302 and section 303 shall take effect 90 days after the effective date of the rules first issued under section 311.

Mr. ZABLOCKI (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. ZABLOCKI).

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to encourage exports by establishing in the Department of Commerce an office to promote the formation of export trade associations and export trading companies, by permitting bank holding companies and bankers' banks to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade, and for other purposes."

Two similar House bills (H.R. 1799 and H.R. 6016) were laid on the table.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill (S. 734) and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin? The Chair hears none and, without objection, appoints the following conferees:

For title I of the House amendment and modifications committed to conference: Messrs. ZABLOCKI, BINGHAM, ECKART, BONKER, WOLPE, SHAMANSKY, BROOMFIELD, LAGOMARSINO, ERDAHL, and GILMAN, and Mrs. FENWICK;

For title II of the House amendment and modifications committed to conference: Messrs. ST GERMAIN, ANNUNZIO, MINISH, LAFALCE, BARNARD, STANTON of Ohio, WYLIE, MCKINNEY, and LEACH of Iowa; and

For title III of the House amendment and modifications committed to

conference: Messrs. RODINO, SEIBERLING, HUGHES, MCCLORY, and BUTLER.

There was no objection.

VETERANS' DISABILITY COMPENSATION AND SURVIVORS' BENEFITS AMENDMENTS OF 1982

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 6782, as amended.

The Clerk read the title of the bill.

□ 1450

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. MONTGOMERY) that the House suspend the rules and pass the bill, H.R. 6782, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 400, nays 0, not voting 34, as follows:

[Roll No. 215]

YEAS—400

Addabbo	Conte	Forsythe
Akaka	Conyers	Fowler
Albosta	Corcoran	Frank
Alexander	Coughlin	Frenzel
Anderson	Courter	Frost
Andrews	Coyne, James	Fuqua
Annunzio	Coyne, William	Garcia
Anthony	Craig	Gaydos
Applegate	Crane, Philip	Geidenson
Archer	D'Amours	Gephardt
Ashbrook	Daniel, Dan	Gibbons
Aspin	Daniel, R. W.	Gilman
Atkinson	Daschle	Gingrich
AuCoin	Daub	Glickman
Badham	Davis	Goldwater
Bafalis	de la Garza	Gonzalez
Bailey (MO)	Deckard	Goodling
Bailey (PA)	Dellums	Gore
Barnard	Derrick	Gradison
Barnes	Derwinski	Gramm
Beard	Dickinson	Gray
Bedell	Dicks	Green
Beilenson	Dingell	Gregg
Benedict	Dixon	Grisham
Benjamin	Donnelly	Guarini
Bennett	Dorgan	Gunderson
Bereuter	Dowdy	Hagedorn
Bethune	Downey	Hall (OH)
Bevill	Dreier	Hall, Ralph
Bingham	Duncan	Hall, Sam
Bliley	Dunn	Hamilton
Boggs	Dwyer	Hammerschmidt
Boland	Dyson	Hance
Boner	Early	Hansen (UT)
Bonker	Eckart	Harkin
Bouquard	Edgar	Hartnett
Bowen	Edwards (AL)	Hatcher
Breaux	Edwards (CA)	Hawkins
Brinkley	Edwards (OK)	Heckler
Brodhead	Emerson	Hefner
Brooks	Emery	Heftel
Broomfield	English	Hendon
Brown (CA)	Erdahl	Hertel
Brown (CO)	Erlenborn	Hightower
Broyhill	Ertel	Hiler
Burgener	Evans (DE)	Hillis
Burton, Phillip	Evans (IA)	Holland
Butler	Evans (IN)	Hollenbeck
Byron	Fary	Holt
Campbell	Fascell	Hopkins
Carman	Fazio	Horton
Carney	Fenwick	Howard
Chappell	Ferraro	Hoyer
Chappie	Fiedler	Hubbard
Cheney	Fields	Huckaby
Chisholm	Findley	Hughes
Clausen	Fish	Hunter
Clinger	Fithian	Hutto
Coats	Flippo	Hyde
Coelho	Florio	Ireland
Coleman	Foglietta	Jacobs
Collins (TX)	Foley	Jeffords
Conable	Ford (MI)	Jeffries
Jenkins	Murphy	Shelby
Johnston	Murtha	Shumway
Jones (NC)	Myers	Shuster
Jones (OK)	Napier	Simon
Kastenmeier	Natcher	Skeen
Kazen	Neal	Skelton
Kemp	Nelligan	Smith (AL)
Kennelly	Nelson	Smith (IA)
Kildee	Nichols	Smith (NE)
Kindness	Nowak	Smith (NJ)
Kogovsek	O'Brien	Smith (OR)
Kramer	Oberstar	Smith (PA)
LaFalce	Obey	Snowe
Lagomarsino	Ottinger	Snyder
Lantos	Oxley	Solarz
Latta	Panetta	Solomon
Leach	Parris	Spence
LeBoutillier	Pashayan	St Germain
Lee	Patman	Stangeland
Lehman	Patterson	Stanton
Lent	Paul	Stark
Lewis	Pease	Stenholm
Livingston	Perkins	Stokes
Loeffler	Petri	Stratton
Long (LA)	Peyser	Studds
Long (MD)	Pickle	Stump
Lott	Porter	Swift
Lowery (CA)	Price	Synar
Lowry (WA)	Pritchard	Tauke
Lujan	Pursell	Tauzin
Luken	Quillen	Taylor
Lundine	Railsback	Thomas
Lungren	Rangel	Traxler
Madigan	Ratchford	Trible
Markey	Regula	Udall
Marlenee	Reuss	Vander Jagt
Marriott	Rhodes	Vento
Martin (IL)	Richmond	Volkmer
Martin (NC)	Rinaldo	Walgren
Martin (NY)	Ritter	Walker
Martinez	Roberts (KS)	Wampler
Matsui	Roberts (SD)	Washington
Mattox	Robinson	Watkins
Mavroules	Rodino	Waxman
Mazzoli	Roe	Weaver
McClory	Roemer	Weber (OH)
McCollum	Rogers	Weiss
McCurdy	Rose	White
McDade	Rosenthal	Whitehurst
McDonald	Rostenkowski	Whitley
McEwen	Roth	Whittaker
McGrath	Roukema	Whitten
McHugh	Rousselot	Williams (MT)
McKinney	Roybal	Williams (OH)
Mica	Rudd	Wilson
Michel	Russo	Winn
Mikulski	Sabo	Wirth
Miller (CA)	Santini	Wolf
Miller (OH)	Savage	Wolpe
Mineta	Sawyer	Wortley
Minish	Scheuer	Wright
Mitchell (MD)	Schneider	Wyden
Mitchell (NY)	Schroeder	Wylie
Moakley	Schulze	Yatron
Molinari	Schumer	Young (AK)
Mollohan	Selberling	Young (FL)
Montgomery	Sensenbrenner	Young (MO)
Moore	Shamansky	Zablocki
Moorhead	Shannon	Zeferetti
Morrison	Sharp	
Motti	Shaw	

NOT VOTING—34

Biaggi	Dornan	Marks
Blanchard	Dougherty	McCloskey
Bolling	Dymally	Moffett
Bonior	Evans (GA)	Oakar
Brown (OH)	Ford (TN)	Pepper
Burton, John	Fountain	Rahall
Clay	Ginn	Siljander
Collins (IL)	Hansen (ID)	Staton
Crane, Daniel	Jones (TN)	Weber (MN)
Crockett	Leath	Yates
Dannemeyer	Leland	
DeNardis	Levitas	

□ 1500

Mr. BROWN of Colorado changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION FOR SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS AND SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT OF COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION TO SIT DURING 5-MINUTE RULE ON THURSDAY, JULY 29, 1982

Mr. FARY. Mr. Speaker, I ask unanimous consent that the Subcommittee on Public Buildings and Grounds and the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation may have permission to sit on Thursday, July 29, 1982, while the House is in session under the 5-minute rule.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. KRAMER. Mr. Speaker, reserving the right to object, I would like to pose an inquiry of the gentleman from Illinois. Could the gentleman tell us what this is all about, please?

□ 1510

Mr. FARY. Mr. Speaker, if the gentleman will yield, the purpose of the hearing will be to inquire into a reported sale of Federal property located at 49 Fourth Street in San Francisco, Calif., which was recently declared excess to the needs of the Federal Government by the General Services Administration. The subcommittee will not be considering any legislation therefore, but instead, holding what I perceive to be an oversight hearing, which should last half an hour.

Mr. KRAMER. Mr. Speaker, further reserving the right to object, can the gentleman tell me whether he has spoken to the gentleman from Minnesota (Mr. STANGELAND) about this hearing?

Mr. FARY. Yes.

Mr. KRAMER. And he has no objections?

Mr. FARY. Yes.

Mr. KRAMER. Yes, he has no objection?

Mr. FARY. None.

Mr. KRAMER. Mr. Speaker, I withdraw my reservation of objection, and I thank the gentleman for his response.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1983

Mr. PRICE. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill—H.R. 6030—to authorize appropriations for fiscal year 1983 for the Armed Forces, for procurements, for research, development, test, and evaluation, and for operation and maintenance, to prescribe personnel strengths for such fiscal

clear jurisdictional boundaries for the CFTC and the SEC. The accord was necessitated in part by the seventh circuit decision in the Chicago Board of Trade against SEC which held that options on commodities including Government-issued debt instruments were subject to both the CFTC's exclusive jurisdiction and the commodity options ban under the Commodity Exchange Act. The court also held that the SEC did not have authority to regulate these options under the Federal securities laws.

Under the seventh circuit's decision, therefore, options on Government-issued debt securities that are also commodities, like GNMA's, Treasury bills, and Treasury bonds, cannot now be publicly traded. Since the seventh circuit decision rests on independent holdings under the Commodity Exchange Act and the Federal securities laws, I believe that it is generally agreed that both H.R. 6156 and S. 2109 must be enacted to remove any legal barriers that exist which prohibit the legal trading of those options.

I hope that the members of the Committee on Banking, Housing, and Urban Affairs will work with the members of the Committee on Agriculture, Nutrition, and Forestry to insure that S. 2109 is enacted.

Mr. D'AMATO. Mr. President, I yield back my time.

Mr. SARBANES. I yield back my time.

Mr. COHEN. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. COHEN. I request the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time having been yielded back, the question is on the third reading of the bill.

The bill was ordered to be read a third time and was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from New Jersey (Mr. BRADY) and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Montana (Mr. MELCHER), and the Senator from Massachusetts (Mr. TSONGAS) are necessarily absent.

I also announce that the Senator from Oklahoma (Mr. BOREN) is absent because of illness in the family.

I further announce that, if present and voting, the Senator from Montana (Mr. MELCHER) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 386 Leg.]

YEAS—91

Abdnor	Garn	Mitchell
Andrews	Glenn	Moynihan
Armstrong	Goldwater	Murkowski
Baker	Gorton	Nickles
Baucus	Grassley	Nunn
Biden	Hart	Packwood
Boschwitz	Hatch	Pell
Bradley	Hatfield	Percy
Bumpers	Hawkins	Pressler
Burdick	Hayakawa	Proxmire
Byrd,	Heflin	Pryor
Harry F., Jr.	Heinz	Quayle
Byrd, Robert C.	Helms	Randolph
Cannon	Hollings	Riegle
Chafee	Huddleston	Roth
Chiles	Humphrey	Rudman
Cochran	Inouye	Sarbanes
Cohen	Jackson	Sasser
Cranston	Jepsen	Schmitt
D'Amato	Johnston	Simpson
Danforth	Kassebaum	Specter
DeConcini	Kasten	Stafford
Denton	Laxalt	Stennis
Dixon	Leahy	Stevens
Dole	Levin	Symms
Domenici	Long	Thurmond
Durenberger	Lugar	Tower
Eagleton	Mathias	Wallop
East	Mattingly	Warner
Exon	McClure	Zorinsky
Ford	Metzenbaum	

NOT VOTING—9

Bentsen	Dodd	Melcher
Boren	Kennedy	Tsongas
Brady	Matsunaga	Weicker

So the bill (H.R. 6156) was passed.

SENATOR MATTINGLY RECEIVES GOLDEN GAVEL AWARD

Mr. BAKER. Mr. President, I observe that it is now 4:33 in the afternoon. According to calculations given to me by the Journal Clerk, that means 3 minutes ago, the distinguished occupant of the Chair (Mr. MATTINGLY) completed 100 hours of presiding over the Senate. For those not familiar with the situation, that means that, in due course, he will be lavishly praised and given an award called the Golden Gavel.

What that also means is that he has sort of turned into a second parliamentarian.

I am grateful he has given that service, as I know all my colleagues in the Senate are.

Mr. HEINZ. Mr. President, I join in commending the majority leader on his recognition of the Chair and his distinguished service in wielding, if not a golden gavel, a very eloquent ivory implement. I know the Chair is not supposed to make comments on his own, but I compliment him anyway.

The PRESIDING OFFICER. The Chair expresses his appreciation.

EXPORT TRADING COMPANIES ACT—CONFERENCE REPORT

Mr. HEINZ. Mr. President, I submit a report of the committee of conference on S. 734 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 734) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD.)

Mr. BAKER. Mr. President, I ask unanimous consent that on this conference report, there be a time limitation of 15 minutes to be equally divided and the control of the time to be in the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, this is a conference report on the Export Trading Companies Act, which is no stranger to the Senate. It has twice passed the Senate without a dissenting vote, in this Congress and the last. It has been the subject, over in the House, of hearings in three different committees.

The House version passed the House without opposition. It was originally strongly supported by President Carter in his administration. It is now strongly supported by the Reagan administration. Indeed, President Reagan mentioned it at the outset in his news conference on Tuesday of this week.

Mr. President, I view this bill not just as an export trading company bill, but a bill that will allow businesses, many of them small, many of them medium sized, to join together and compete internationally as trading companies the way the Germans and the Japanese have done so successfully.

I view this as a jobs bill, Mr. President. Indeed, various people have studied this bill. Chase Econometrics has estimated, for example, that this bill will create somewhere between 340,000 and 640,000 jobs over the next 3 to 4 years. Administration studies have made similar estimates. That, Mr. President, is a jobs bill.

These jobs are particularly important to our economy. They are in an important sector, the export sector, which includes virtually everything we make in this country, from food and fiber, our great agricultural potential, to manufactures of every conceivable kind. Increasingly, as our economy matures, the real potential for growth and job creation is going to be more

and more in international trade. Just recently, we were advised that of the jobs created in this country over the last 10 years, fully one-third of all the new jobs have been created through exports.

I observe further, Mr. President, that enactment of this bill today is particularly timely in view of August's record $7 billion trade deficit. If we continue to run at that rate for a 12-month period, that will result in an $84 billion trade deficit. That is clearly something that this country cannot afford.

Mr. President, I would be remiss if I did not thank a number of people who have worked very, very diligently on this bill and on the conference report. First, I am deeply grateful to the chairman of the Committee on Banking, Housing, and Urban Affairs (Mr. GARN) for the total cooperation he has given in this matter. He has, as chairman of our committee, scheduled the necessary hearings and markups expeditiously. He has been immensely supportive of the legislation, of which he, himself, is an original cosponsor.

I thank Senator RIEGLE, the ranking minority member on the committee who has, at every turn, supported the legislation fully, has worked to make it better, has offered prefecting amendments. This bill could not have been as good a bill as it is today without his determined help.

I am especially grateful to Senator THURMOND, who has been extremely helpful in understanding the nature of this bill. He has done a superb job in counseling us in our deliberations with the Judiciary Committee on the House side.

Mr. President, there are many others I could and should thank on this. Senator BRADLEY has made an important contribution. As much as anyone else, Senator STEVENSON, who was one of the prime movers of this bill in the last Congress, deserves our thanks and congratulations. I would be remiss in those particular instances if I did not point them out. Of course, without the help of all the members of the committee, we would not have this excellent bill before us today.

Mr. GARN. Will the Senator yield?

Mr. HEINZ. I am happy to yield.

Mr. GARN. The distinguished Senator from Pennsylvania is overgenerous. I appreciate the lavish praise, but I think the record should be set straight that I had very little to do with this bill except stay in the background. Senator HEINZ has totally taken this over from the beginning, last year and this year. He deserves 99 percent of the credit for this bill, about to become law within a few days if it survives the House.

Again, I appreciate his praise, but it is vastly overstated in view of the time and effort that he, himself, has put in through his service as chairman of the International Finance Subcommittee of the Banking Committee.

Mr. HEINZ. Mr. President, I thank the distinguished Senator from Utah. I reserve the remainder of my time.

Mr. RIEGLE. Mr. President, I thank the Senator from Pennsylvania for his kind comments and most gracious words. I commend him for his exceptional leadership on this effort and for his success in bringing it to a conclusion today.

The adoption of the Export Trading Company Act marks the happy conclusion of more than 3 years of congressional consideration of legislation to encourage the formation and operation of export trading companies. The first bill on the subject was introduced in August 1979 by the former Senator from Illinois, Adlai Stevenson, who chaired the International Finance Subcommittee at the time.

The legislation has enjoyed wide bipartisan support in the Senate from its introduction. The distinguished current chairman of the International Finance Subcommittee, the senior Senator from Pennsylvania, Mr. HEINZ, was an early and avid supporter of this legislation, and it has been carried to consummation in this Congress under his leadership.

I, too, was an early cosponsor of this legislation in both the 96th and 97th Congresses, and am delighted to support adoption of the conference report. I believe the Export Trading Company Act can significantly expand U.S. exports and, thereby, U.S. jobs. Banks will have an opportunity to invest in export trading companies through bank holding companies. Antitrust concerns can be clarified for all exporters under procedures established in the act. The Commerce Department and the Export-Import Bank are directed to give particular attention to the promotion of exports through U.S. export trading companies.

Mr. President, this legislation has been carefully considered. There have been dozens of days of hearings over the past 3 years on this bill or earlier versions of it. The legislation has passed the Senate twice by unanimous rollcall votes. The conference report is the product of arduous negotiations involving several committees in the House and the Senate. The legislation is supported by the present administration, as it was by President Carter and his administration.

I urge adoption of the conference report. Our growing trade deficit leaves no room for further delay in providing U.S. producers with new opportunities to expand exports.

Mr. PROXMIRE. Mr. President, I support this conference report.

The legislation before us would authorize the establishment of export trading companies by bank holding companies and provide for antitrust clearance for such trading companies and exporters under the jurisdiction of the Justice Department's Antitrust Division and the Commerce Department.

Similar legislation has passed the Senate twice before. I voted in favor of the Senate-passed bills with substantial reservation. When those bills went to the House, the House Banking and Judiciary Committees did an outstanding job of refining the Senate bill. My hat goes off to Chairman ST GERMAIN and Chairman RODINO.

This legislation will place administrative responsibility for the banking sections where it belongs: in the Federal Reserve. No antitrust clearance will be given without the concurrence of the Justice Department.

I believe we have achieved a balance in this bill between the need to provide legislation to encourage exports and the need to provide strong provisions to prevent unsafe unsound banking practices or violations of our antitrust laws.

We all hope very much that this legislation will increase our exports, particularly among small- and medium-sized businesses.

Mr. President, the International Finance Subcommittee of the Banking Committee has worked long and hard on this legislation. The legislation could not have been accomplished without the hard work of Senator HEINZ and his willingness to compromise.

I commend this legislation to my colleagues.

Mr. RIEGLE. Mr. President, I yield back the remainder of the time on this side of the aisle.

Mr. HEINZ. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Pennsylvania has 2 minutes, 45 seconds.

Mr. HEINZ. Mr. President, I want to make one last comment. We are nearing passage on this major jobs bill. When it passes the Senate, it will go to the House. The House, at this moment, is still engaged in their debate on the so-called balanced budget constitutional amendment. At the conclusion of that debate, there will then be an opportunity for the House to take up this bill and pass it.

Over in the House, too, this has been a very bipartisan bill. It has been championed by Representative ST GERMAIN, chairman of the House Committee on Banking; it has been championed by DON BONKER, of Washington, chairman of the House export task force.

It has been acted on favorably by the House Foreign Affairs Committee, where Chairman ZABLOCKI has lent his total support to this bill. The chairman of the House Judiciary Committee, Congressman RODINO, has been incredibly helpful in facilitating passage.

I not only hope that the House passes this bill tonight, but I urge all Members in the House who have supported this bill to do everything in their power, including Speaker O'NEILL, who I know strongly favors this bill, to facilitate its passage. We

have waited nearly 4 years to get this bill through the legislative process. It was President Carter's highest international trade priority, but it did not make it. I hope it makes it this time. The Senate has done its duty once again. I commend all my colleagues.

Also, as I mentioned, the Senator from New Jersey (Mr. BRADLEY) has been very supportive of this legislation from the time he arrived in the Senate.

I hope the the House is as supportive there as we are on this side.

Mr. President, I see no Senator requesting time. I yield back the remainder of my time.

The PRESIDING OFFICER. Do both sides yield back their time?

Mr. RIEGLE. All time has been yielded back.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. RIEGLE. I move to reconsider the vote by which the conference report was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMENDATION OF SENATOR MATTINGLY

Mr. NUNN. Mr. President, I want to commend the junior Senator from Georgia, who is in the chair, for his extraordinary service to the Senate. I think he is well deserving of the award and all the accolades that were stated by the majority leader a few minutes ago. I would like to identify myself with the majority leader's remarks.

Also, I might say that it is comforting to know that anytime I need to converse with the junior Senator from Georgia, I can always find him in the chair. It is a very convenient arrangement.

However, I do, in all sincerity, congratulate him for his extrordinary service to the Senate.

The PRESIDING OFFICER. The Chair thanks the senior Senator from Georgia.

VIRGIN ISLANDS SOURCE INCOME AND DISABILITY PROPOSAL—H.R. 7093

Mr. BAKER. Mr. President, if I could have the attention of the distinguished chairman of the Finance Committee, the distinguished ranking minority member and the Senator from Maine, I wonder if the Senator from Kansas would be prepared at this time to establish the status of H.R. 7093, the Virgin Islands source income and disability proposal.

I yield to the Senator, Mr. President.

Mr. DOLE. Mr. President, I ask unanimous consent that we might move to the consideration of H.R. 7093.

Mr. LONG. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE and Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I wonder if the Senator from Louisiana will withhold so the Senator from Maine might have a brief discussion on that.

Mr. LONG. Mr. President, I am more than willing to withhold my objection with the understanding the Chair will recognize me so that I might object after this subject is discussed.

Mr. DOLE. Mr. President, let me just say one thing. There is a section of this bill that is controversial. Part of it is not.

H.R. 7093 would reduce to 10 percent the 30-percent withholding tax withheld at source by U.S. Virgin Islands payers of certain Virgin Islands source passive investment income when the recipient is a U.S. individual or corporation.

The bill would allow the Virgin Islands government to further reduce the 10-percent rate at its discretion.

It is not that particular provision that is in controversy. The provision that is in some—I do not say controversy, but there is some question about it—the provision relates to the social security disability insurance; and I yield to the distinguished Senator from Maine so that he may address the question of the Senator from Louisiana.

Mr. COHEN. Mr. President, I thank the Senator from Kansas for this opportunity to discuss an amendment that was offered by Senator LEVIN and me and others. In fact, it is an amendment that was cosponsored by Senators DOLE, ARMSTRONG, HEINZ, RIEGLE, DURENBERGER, METZENBAUM, BIDEN, BOREN, BURDICK, CANNON, CHAFEE, COCHRAN, CRANSTON, DIXON, LEAHY, PELL, SASSER, STAFFORD, QUAYLE, and DODD.

The purpose of our proposal is to provide immediate relief to the thousands of disabled individuals whose benefits are being erroneousy terminated and subsequently restored after a lengthy appeals process has run its course. Our legislation also would slow down the rate of reviews so that these disability investigations may proceed at a more measured pace.

In response to a congressional mandate, the Social Security Administration has been reviewing the eligibility of hundreds of thousands of individuals with nonpermanent disabilities. In my judgment, Congress was correct in mandating periodic reviews to identify those individuals who have recovered sufficiently to be able to resume working. The implementation of this law, however, has created chaos and inflicted pain that Congress neither envisioned nor desired when it enacted what was intended to be a sound management tool. And we in Congress share a large measure of responsibility for failing to establish specific guidelines for selecting the cases and conducting the investigations.

On May 25, Senator LEVIN and I held a hearing in our Oversight of Government Management Subcommittee to investigate numerous reports from all over the country that truly disabled people were having their benefits terminated. What we found was most distrubing. Benefits were being discontinued in more than 40 percent of the cases reviewed—far above the 20-percent rate originally predicted by the General Accounting Office. Yet, more than two-thirds of the claimants who appealed were eventually reinstated to the program after a hearing before an administrative law judge. The tragedy is that in waiting for reinstatement these severely disabled persons and their families must go without benefits for many months—or even a year—due to the tremendous backlog of cases.

Witnesses at our hearing recounted case after case in which truly disabled individuals lost their benefits and suffered financial hardship and emotional trauma because of an unjust system. Our hearing revealed a disturbing pattern of misinformation, conflicting standards, incomplete medical examinations, inadequately documented reviews, bureaucratic indifference, erroneous decisions, financial and emotional hardships, and an overburdened system.

Rectifying such fundamental deficiencies will require comprehensive legislation, and I applaud Senator DOLE for his willingness to thoroughly review the disability program. It will, however, take time for Congress to effect the needed changes in the disability review process. In the interim, it is essential that we act to provide immediate relief to the disabled individuals whose benefits are being terminated and then reinstated, and to slow down the reviews so that they may proceed more rationally.

Our legislation has two parts: First, it would direct the Secretary of Health and Human Services to determine on a State-By-State basis the appropriate volume of reviews. Second, it would continue disability payments until the administrative law judge stage of the appeals process. Both steps could be easily and quickly implemented.

Slowing down the number of cases reviewed would help both claimants and the State agencies which conduct the investigations. Currently, case files are literally overflowing out of boxes,

attempt to deal with a difficult situation. Quite simply, it permits landowners to join the system even though they may not technically qualify. This provision is not designed to serve as a vehicle to stop an otherwise eligible Federal project through the purposeful inclusion of an area not specifically included by the Congress within the Coastal Barrier Resources System.

Section 5. Limitations on Federal Expenditures Affecting The System

Section 5 specifies the limitations on new Federal financial expenditures or assistance. The Conferees agreed to provisions appearing in both the Senate bill and the House amendment and modified a provision of the House amendment concerning stabilization and erosion control projects in Louisiana. As modified, section 5(a)(3) provides a limited exception to the prohibition of expenditures for stabilization projects. Expenditures for such projects are permissible within the units designated pursuant to Section 4 on maps numbered SO1 through SO8 if such projects are for purposes other than encouraging development and, within all units, in cases where an emergency threatens life, land, and property immediately adjacent to the unit in question.

The limitations contained in Section 5 apply to areas within the Coastal Barrier Resources System as well as certain other facilities that may extend into a System unit, such as a bridge or a causeway. There need not be a showing that the expenditure would stimulate development. Except as provided in the Section 5(a)(3) exception, the fact that a particular project may be designed to benefit a non-coastal barrier is not significant.

Section 6. Exceptions

Section 6 of the Conference report outlines the specific exceptions to the general prohibition on new Federal expenditures or financial assistance.

Under Section 6(a) of the Senate bill the appropriate Federal officer would be authorized to make those specific Federal expenditures after providing written notification to the Secretary. The Conferees agreed to accept the House provision which requires the appropriate Federal officer to consult with the Secretary before making any Federal expenditures or financial assistance available under the provisions of Section 6.

Section 6(a)(1) provides an exception for energy projects in or adjacent to coastal areas. Both the Senate bill and the House amendment contained similar provisions and the Conferees agreed to adopt the House language. Federal assistance or expenditures may be made available for "any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body."

Section 6(a)(3) of the Conference report contains a provision included in the House amendment which provides an exception for the maintenance, replacement, reconstruction, or repair of publicly owned or publicly operated roads, structures or facilities that are essential links in a larger network or system.

Section 6(a)(4) exempts military activities essential to national security from the general prohibition of Federal expenditures or financial assistance under Section 5. The Conferees agreed that the determination as to whether military activities are essential to national security must be made in accordance with existing law and procedure.

The Conference report adopts the exception for Coast Guard facilities which was included in the House amendment and requested by the Coast Guard. Section 6(a)(5) allows expenditures or financial assistance for the construction, maintenance, operation and rehabilitation of Coast Guard facilities.

The Senate bill contained an exemption for certain programs and projects for fish and wildlife conservation so long as such projects were consistent with the purposes of the Act. The House amendment contained a similar provision but such projects did not have to be consistent with the purposes of the Act. The Conferees agreed to accept the House language. However, under the language in Section 6(a)(7)(A), such projects must be consistent with the purposes of the Act.

The House amendment contained an exception for projects under the Coastal Zone Management Act—a provision not included in the Senate bill. The Conferees agree to adopt the House provision which is incorporated in Section 6(a)(6)(C) of the Conference report.

The House amendment provided an exception for assistance for emergency actions essential to the saving of lives and the public health and safety. The Senate bill contained a similar provision but limited the exception to those actions necessary to alleviate the immediate emergency. The Conference report adopts a modified provision in Section 6(a)(6)(E) which permits assistance for emergency actions if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 and section 1362 of the National Flood Insurance Act of 1968 and are limited to actions that are necessary to alleviate the emergency. Section 305 of the Disaster Relief Act authorizes the President, in a declared emergency, to provide any or all of the assistance available under the Act as the President deems appropriate.

Section 7. Certification of Compliance

Section 7 adopts provisions appearing in both the Senate bill and the House amendment.

Section 8. Priority of Laws

Section 8 of the Conference report adopts a provision of the Senate bill. This section assures that this Act will not interfere with the current delicate balance between other Federal laws operating with regard to coastal barrier areas and State and local laws. Additionally, this section protects local interests by providing that this Act is not intended to preempt State or local laws unless there is a direct conflict.

Section 9. Separability

Section 9 of the Conference report adopts a provision of the Senate bill not contained in the House amendment. This section is a standard separability provision. It provides that each provision and application of this law will be judged on its own merits.

Section 10. Reports to Congress

This section adopts a provision that appeared in both the Senate bill and the House amendment. The Conferees agreed to adopt the Senate language and to add a requirement that the Secretary's report include an anlysis of the effect, if any, that general revenue sharing grants have had on undeveloped coastal barriers.

The Secretary's report will also include recommendations for additions to or deletions from the Coastal Barrier Resources System. While the conferees do not intend that areas developed after the date of the Act should be recommended for deletion for development reasons, they recognized that in a few areas further study may reveal possible errors. In particular, the conferees are aware that there is a dispute regarding the geological composition of Coconut Point, Florida. There is also a dispute regarding the development status of approximately 114 acres of the Wilfurt Woods property on the west end of the Island of Sanibel, Florida. These 114 acres are part of a planned unit development which has been approved in a settlement agreement between the owners of the property and the Sanibel-Captiva Conservation Foundation. Finally, there is a question regarding the conservation status of an area included in the Casey Key, Florida, map. The conferees intend that the Department of the Interior study these areas and report to the appropriate committees as soon as practicable to insure that any errors may be addressed legislatively. The Conferees intend that any reports transmitted by the Secretary under this section, as well as any maps and notifications of boundary modifications under Section 4, shall also be submitted to the Committee on Public Works and Transportation of the House of Representatives.

Section 11. Amendment Regarding Flood Insurance

Section 11(a) adopts the House language amending Section 1321 of the National Flood Insurance Act of 1968. Section 11(b) adopts the Senate language amending Section 341(d)(2) of the Omnibus Budget and Reconciliation Act of 1981.

From the Committee on Merchant Marine and Fisheries:

WALTER B. JONES,
JOHN B. BREAUX,
GERRY E. STUDDS,
WILLIAM J. HUGHES,
GENE SNYDER,
EDWIN B. FORSYTHE,
THOMAS B. EVANS, Jr.,

From the Committee on Public Works and Transportation:

ROBERT A. ROE,
BOB EDGAR,
JOHN G. FARY,
DON H. CLAUSEN,
JOHN PAUL HAMMERSCHMIDT,

Managers on the Part of the House.

ROBERT T. STAFFORD,
JOHN H. CHAFFEE,
SLADE GORTON,
JENNINGS RANDOLPH,
DANIEL P. MOYNIHAN,

Managers on the Part of the Senate.

MAKING IN ORDER AT ANY TIME HEREAFTER CONSIDERATION OF CONFERENCE REPORT ON S. 1018, COASTAL BARRIER RESOURCES ACT

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent that it may be in order at any time hereafter to consider the conference report on the Senate bill (S. 1018) to protect and conserve fish and wildlife resources, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

CONFERENCE REPORT ON S. 734, EXPORT TRADING COMPANY ACT OF 1981

Mr. RODINO submitted the following conference report and statement on the Senate bill (S. 734) to encourage exports by facilitating the infor-

mation and operation of export trading companies, export trade associations, and the expansion of export trade services generally:

CONFERENCE REPORT (H. REPT. No. 97-924)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 734) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—GENERAL PROVISIONS

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1982".

FINDINGS; DECLARATION OF PURPOSE

SEC. 102. (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 percent of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through export trading companies;

(6) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(7) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(8) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(9) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(10) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(11) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by permitting bank holding companies, bankers' banks, and Edge Act corporations and agreement corporations that are subsidiaries of bank holding companies to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade.

DEFINITIONS

SEC. 103. (a) For purposes of this title—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes, but is not limited to, accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services;

(3) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means a person, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(7) the term "antitrust laws" means the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition, and any State antitrust or unfair competition law.

(b) The Secretary of Commerce may by regulation further define any term defined in subsection (a), in order to carry out this title.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 104. The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

TITLE II—BANK EXPORT SERVICES

SHORT TITLE

SEC. 201. This title may be cited as the "Bank Export Services Act".

SEC. 202. The Congress hereby declares that it is the purpose of this title to provide for meaningful and effective participation by bank holding companies bankers' banks, and Edge Act corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section 4(c)(14) of the Bank Holding Company Act of 1956, the Board of Governors of the Federal Reserve System should pursue regulatory policies that—

(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to compete with similar foreign-owned institutions in the United States and abroad;

(2) afford to United States commerce, industry and agriculture especially small and medium-size firms, a means of exporting at all times;

(3) foster the participation by regional and smaller banks in the development of export trading companies; and

(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company's needs.

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 203. Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

"(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up

to another thirty days the period during which such disapproval may be issued.

"(ii) The period for disapproval may be extended for such additional thrity-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

"(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(iv) The Board may disapprove any proposed investment only if—

"(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

"(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

"(III) the bank holding company fails to furnish the information required under clause (iii).

"(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

"(vi) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

"(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

"(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

"(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(C) For purposes of this paragraph, an export trading company—

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

"(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

"(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

"(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611-631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601-604(a)), which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock of other evidences of ownership in one or more export trading companies.

"(F) For purposes of this paragraph—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

"(ii) the term 'export trade services' includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

"(iii) the term 'bank holding company' shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

"(iv) the term 'extension of credit' shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.".

SEC. 205. On or before two years after the date of the enactment of this Act, the Federal Reserve Board shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives the Board's recommendations with respect to the implementation of this section, the Board's recommendations with respect to the implementation of this section, the Board's recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-size, and minority business concerns, and the Board's recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 206. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies as defined in section 4(c)(14)(F)(i) of the Bank Holding Company Act of 1956, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

BANKERS' ACCEPTANCES

SEC. 207. The seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372) is amended to read as follows:

"(7)(A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as 'institutions'), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

"(i) which grow out of transactions involving the importation or exportation of goods;

"(ii) which grow out of transactions involving the domestic shipment of goods; or

"(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

"(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this paragraph.

"(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

"(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

"(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this paragraph shall apply.

"(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction.".

TITLE III—EXPORT TRADE CERTIFICATES OF REVIEW

EXPORT TRADE PROMOTION DUTIES OF SECRETARY OF COMMERCE

SEC. 301. To promote and encourage export trade, the Secretary may issue certificates of review and advise and assist any person with respect to applying for certificates of review.

APPLICATION FOR ISSUANCE OF CERTIFICATE OF REVIEW

SEC. 302. (a) To apply for a certificate of review, a person shall submit to the Secretary a written application which—

(1) specifies conduct limited to export trade, and

(2) is in a form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule or regulation promulgated under section 310.

(b)(1) Within 10 days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall publish in the Federal Register a notice that announces that an application for a certificate of review has been submitted, identifies each person submitting the application, and describes the conduct for which the application is submitted.

(2) Not later than 7 days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall transmit to the Attorney General—

(A) a copy of the application,

(B) any information submitted to the Secretary in connection with the application, and

(C) any other relevant information (as determined by the Secretary) in the possession of the Secretary, including information regarding the market share of the applicant in the line of commerce to which the conduct specified in the application relates.

ISSUANCE OF CERTIFICATE

SEC. 303. (a) A certificate of review shall be issued to any applicant that establishes that its specified export trade, export trade activities, and methods of operation will—

(1) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

(2) not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

(3) not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

(4) not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(b) Within 90 days after the Secretary receives an application for a certificate of review, the Secretary shall determine whether the applicant's export trade, export trade activities, and methods of operation meet the standards of subsection (a). If the Secretary, with the concurrence of the Attorney General, determines that such standards are met, the Secretary shall issue to the applicant a certificate of review. The certificate of review shall specify—

(1) the export trade, export trade activities, and methods of operation to which the certificate applies,

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions the Secretary or the Attorney General deems necessary to assure compliance with the standards of subsection (a).

(c) If the applicant indicates a special need for prompt disposition, the Secretary and the Attorney General may expedite action on the application, except that no certificate of review may be issued within 30 days of publication of notice in the Federal Register under section 302(b)(1).

(d)(1) If the Secretary denies in whole or in part an application for a certificate, he shall notify the applicant of his determination and the reasons for it.

(2) An applicant may, within 30 days of receipt of notification that the application has been denied in whole or in part, request the Secretary to reconsider the determination. The Secretary, with the concurrence of the Attorney General, shall notify the applicant of the determination upon reconsideration within 30 days of receipt of the request.

(e) If the Secretary denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of documents submitted by the applicant in connection with the application for the certificate, the Secretary and the Attorney General shall return to the applicant, not later than 30 days after receipt of the request, the documents and all copies of the documents available to the Secretary and the Attorney General, except to the extent that the information contained in a document has been made available to the public.

(f) A certificate shall be void ab initio with respect to any export trade, export trade activities, or methods of operation for which a certificate was procured by fraud.

REPORTING REQUIREMENT; AMENDMENT OF CERTIFICATE; REVOCATION OF CERTIFICATE

SEC. 304. (a)(1) Any applicant who receives a certificate of review—

(A) shall promptly report to the Secretary any change relevant to the matters specified in the certificate, and

(B) may submit to the Secretary an application to amend the certificate to reflect the effect of the change on the conduct specified in the certificate.

(2) An application for an amendment to a certificate of review shall be treated as an application for the issuance of a certificate. The effective date of an amendment shall be the date on which the application for the amendment is submitted to the Secretary.

(b)(1) If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person holding a certificate of review no longer comply with the standards of section 303(a), the Secretary shall request such information from such person as the Secretary or the Attorney General deems necessary to resolve the matter of compliance. Failure to comply with such request shall be grounds for revocation of the certificate under paragraph (2).

(2) If the Secretary or the Attorney General determines that the export trade, export trade activities, or methods of operation of a person holding a certificate no longer comply with the standards of section 303(a), or that such person has failed to comply with a request made under paragraph (1), the Secretary shall give written notice of the determination to such person. The notice shall include a statement of the circumstances underlying, and the reasons in support of, the determination. In the 60-day period beginning 30 days after the notice is given, the Secretary shall revoke the certificate or modify it as the Secretary or the Attorney General deems necessary to cause the certificate to apply only to the export trade, export trade activities, or methods of operation which are in compliance with the standards of section 303(a).

(3) For purposes of carrying out this subsection, the Attorney General, and the Assistant Attorney General in charge of the antitrust division of the Department of Justice, may conduct investigations in the same manner as the Attorney General and the Assistant Attorney General conduct investigations under section 3 of the Antitrust Civil Process Act, except that no civil investigative demand may be issued to a person to whom a certificate of review is issued if such person is the target of such investigation.

JUDICIAL REVIEW; ADMISSIBILITY

SEC. 305. (a) If the Secretary grants or denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or modifies a certificate pursuant to section 304(b), any person aggrieved by such determination may, within 30 days of the determination, bring an action in any appropriate district court of the United States to set aside the determination on the ground that such determination is erroneous.

(b) Except as provided in subsection (a), no action by the Secretary or the Attorney General pursuant to this title shall be subject to judicial review.

(c) If the Secretary denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or amends a certificate, neither

the negative determination nor the statement of reasons therefor shall be admissible in evidence, in any administrative or judicial proceeding, in support of any claim under the antitrust laws.

PROTECTION CONFERRED BY CERTIFICATE OF REVIEW

SEC. 306. (a) Except as provided in subsection (b), no criminal or civil action may be brought under the antitrust laws against a person to whom a certificate of review is issued which is based on conduct which is specified in, and complies with the terms of, a certificate issued under section 303 which certificate was in effect when the conduct occurred.

(b)(1) Any person who has been injured as a result of conduct engaged in under a certificate of review may bring a civil action for injunctive relief, actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for the failure to comply with the standards of section 303(a). Any action commenced under this title shall proceed as if it were an action commenced under section 4 or section 16 of the Clayton Act, except that the standards of section 303(a) of this title and the remedies provided in this paragraph shall be the exclusive standards and remedies applicable to such action.

(2) Any action brought under paragraph (1) shall be filed within two years of the date the plaintiff has notice of the failure to comply with the standards of section 303(a) but in any event within four years after the cause the action accrues.

(3) In any action brought under paragraph (1), there shall be a presumption that conduct which is specified in and complies with a certificate of review does comply with the standards of section 303(a).

(4) In any action brought under paragraph (1), if the court finds that the conduct does comply with the standards of section 303(a), the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(5) The Attorney General may file suit pursuant to section 15 of the Clayton Act (15 U.S.C. 25) to enjoin conduct threatening clear and irreparable harm to the national interest.

GUIDELINES

SEC. 307. (a) To promote greater certainty regarding the application of the antitrust laws to export trade, the Secretary, with the concurrence of the Attorney General, may issue guidelines—

(1) describing specific types of conduct with respect to which the Secretary, with the concurrence of the Attorney General, has made or would make, determinations under sections 303 and 304, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Section 553 of title 5, United States Code, shall not apply to the issuance of guidelines under subsection (a).

ANNUAL REPORTS

SEC. 308. Every person to whom a certificate of review is issued shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, that updates where necessary the information required by section 302(a).

DISCLOSURE OF INFORMATION

SEC. 309. (a) Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5, United States Code.

(b)(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding, subject to appropriate protective orders,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Secretary deems disclosure of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule or regulation promulgated under section 310 permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

RULES AND REGULATIONS

SEC. 310. The Secretary, with the concurrence of the Attorney General, shall promulgate such rules and regulations as are necessary to carry out the purposes of this Act.

DEFINITIONS

SEC. 311. As used in this title—

(1) the term "export trade" means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation,

(2) the term "service" means intangible economic output, including, but not limited to—

(A) business, repair, and amusement services,

(B) management, legal, engineering, architectural, and other professional services, and

(C) financial, insurance, transportation, informational and any other data-based services, and communication services,

(3) the term "export trade activities" means activities or agreements in the course of export trade,

(4) the term "methods of operation" means any method by which a person conducts or proposes to conduct export trade,

(5) the term "person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons,

(6) the term "antitrust laws" means the antitrust laws, as such term is defined in the first section of the Clayton Act (15 U.S.C. 12), and section 5 of the Federal Trade Commission Act (15 U.S.C 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law,

(7) the term "Secretary" means the Secretary of Commerce or his designee, and

(8) the term "Attorney General" means the Attorney General of the United States or his designee.

EFFECTIVE DATES

SEC. 312. (a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(b) Section 302 and section 303 shall take effect 90 days after the effective date of the rules and regulations first promulgated under section 310.

TITLE IV—FOREIGN TRADE ANTITRUST IMPROVEMENTS

SHORT TITLE

SEC. 401. This title may be cited as the "Foreign Trade Antitrust Improvements Act of 1982".

AMENDMENT TO SHERMAN ACT

SEC. 402. The Sherman Act (15 U.S.C. 1 et seq.) is amended by inserting after section 6 the following new section:

"SEC. 7. This Act shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

"(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

"(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

"(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

"(2) such effect gives rise to a claim under the provisions of this Act, other than this section.

If this Act applies to such conduct only because of the operation of paragraph (1)(B), then this Act shall apply to such conduct only for injury to export business in the United States.".

AMENDMENT TO FEDERAL TRADE COMMISSION ACT

SEC. 403. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end thereof the following new paragraph:

"(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

"(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

"(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

"(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

"(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.".

And the House agree to the same.

That the House recede from its amendment to the title of the Senate bill.

For title I of the House amendment and modifications committed to conference:

CLEMENT J. ZABLOCKI,
JONATHAN BINGHAM,
DENNIS E. ECKART,
DON BONKER,
HOWARD WOLPE,
WM. BROOMFIELD,
ROBERT J. LAGOMARSINO,
ARLEN ERDAHL,
BENJAMIN A. GILMAN,
MILLICENT FENWICK,

For title II of the House amendment and modifications committed to conference:

FERNAND J. ST GERMAIN,
FRANK ANNUNZIO,
JOE MINISH,
JOHN J. LAFALCE,
DOUG BARNARD,
J. W. STANTON,
CHALMERS P. WYLIE,
STEWART B. MCKINNEY,
JIM LEACH,

For title III of the House amendment and modifications committed to conference

PETER W. RODINO,
BILL HUGHES,
ROBERT MCCLORY,
M. CALDWELL BUTLER,

Managers on the Part of the House.

JAKE GARN,
JOHN HEINZ,
WILLIAM ARMSTRONG,
JOHN H. CHAFEE,
JOHN C. DANFORTH,
DON RIEGLE,
BILL PROXMIRE,
CHRISTOPHER J. DODD,
ALAN DIXON,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 734) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I

SHORT TITLE

The committee of conference agreed to the House provision: "The Export Trading Company Act of 1982".

FINDINGS

The House amendment contains Congressional findings with respect to the impact of exports on U.S. jobs, the role of service-related industries in U.S. exports, the effects of trade deficits on the value of the dollar, and the responsibilities of the Department of Commerce in export promotion, which are not contained in the Senate bill.

The Senate bill contains findings with respect to the role of the United States as an exporter of agricultural products, and the need for exporters to achieve greater economies of scale, which are not in the House amendment. Other Senate and House findings are similar or identical.

The committee of conference agreed to a combination of the House and Senate provisions, all the findings in the House amendment and an amended version of the Senate finding with respect to agricultural exports.

PURPOSE

The statement of the bill's purpose in the House amendment includes references to the creation of an export trading company promotion office in the Department of Commerce, investment by certain banks in export trading companies, and modification of antitrust laws with respect to export trade, references which are not contained in the Senate bill.

The committee of conference agreed to the House provision with an amendment adding reference to the Edge Act and Agreement corporations as being eligible to invest in trading companies if those corporations are subsidiaries of bank holding companies.

DEFINITIONS

A. The committee of conference agreed and reaffirmed that the definitions contained in title I of the bill apply only to the provisions of title I, and not to the other titles of the bill. To the extent possible, however, the definitions recommended by the committee of conference in title I conform with the definitions recommended in other titles.

The Senate bill defines "goods produced in the United States" as those containing no more then 50% (by value) imported components or materials.

The House amendment contains no such definition.

The committee of conference deletes this definition.

Specific consideration was given to the status, under this and other definitions in the bill, of fish harvested by U.S. flag vessels within the United States fish conservation zone and sold at sea or in a foreign port without having otherwise been landed or processed in the United States. The committee of conference agreed that fish so harvested and sold should be regarded as goods produced in the United States, and their sales as constituting export trade within the meaning of this title and other titles of the bill.

B. The definition of "services produced in the United States" in the Senate bill and the definition of "services" in the House amendment are similar, except that the Senate bill includes some services not mentioned in the House provision, and contains the additional requirement that at least 50% of the value of such services be attributable to the United States.

The committee of conference agreed to the House provision with an amendment to include additional specific services contained in the Senate bill.

C. The definition of "export trade services" in the Senate bill includes "product research and design", which is not specified in the House amendment.

The committee of conference agreed to the Senate provision.

D. The definition of "export trading company" in the Senate bill includes nonprofit organizations, which is not contained in the House amendment. The definition in the House amendment requires export trading companies to be operated principally for the export of U.S. goods, or for facilitating such exports by unaffiliated persons, while the Senate bill requires both.

The committee of conference agreed to a compromise of the Senate and House provisions which includes nonprofit organizations, but permits export export trading companies to perform only one of the two functions contained in both the House and Senate provisions.

E. The House amendment includes definitions of "export trade association" and "State."

The Senate bill has no such provision.

The committee of conference adopted the Senate position.

E. The Senate bill includes a definition of "Secretary", as meaning the Secretary of Commerce.

The House amendment contains no such definition.

The committee of conference agreed with the House position.

F. A definition of "company" contained in the Senate bill, but not in the House amendment, is incorporated in the definition of "export trading company" adopted by the committee of conference.

The conference substitute includes a definition of "anti-trust laws" contained in title III of the Senate bill, but not contained in the House bill, with an amendment deleting reference to section 6 of the Federal Trade Commission Act.

ISSUANCE OF REGULATIONS

The Senate bill authorizes the Secretary of Commerce by regulation to further define terms contained in title I.

The House amendment contains no such authorization.

The committee of conference agreed to the Senate provision.

OFFICE OF EXPORT TRADE

The House amendment directs the Secretary of Commerce to establish an office in that Department to promote and assist export trade associations and export trading companies.

The Senate bill similarly directs the Secretary to promote export trading companies, but does not require the establishment of a Commerce Department office for that purpose.

The committee of conference agreed to the House provision.

TITLE II—BANK EXPORT SERVICES ACT

The Senate receded to the House insofar as the basic statutory framework within which bank-affiliated export trading companies (ETCs) will operate. By placing the ETC within the bank holding company structure rather than within the bank, as the Senate bill provided, the conferees believe that adequate safeguards will continue to exist to minimize potential risk to the bank or banks within the holding company structure and that adequate separation will exist between a bank's involvement in export trade activities and its deposit taking function. The decision to accept the bank holding company structure carried with it to a large extent the utilization of existing regulatory provisions in effect in connection with existing bank holding application practices and procedures except where modified to insure an adequate but yet a minimal regulatory presence. The House, consequently, receded to the Senate to ensure a streamlined application process with respect to basic definitional matters such as what an ETC is and what activities it can engage in, and on a number of ancillary matters such as the authorization for Export-Import Bank loan guarantees. In addition, definitive guidance is provided to the Federal Reserve Board on how to implement this new statute in a way that will insure the rapid growth of ECTs consistent with the purposes of this Act without unnecessary regulation.

REGULATORY FRAMEWORK

S. 734, as a free standing statute, would have permitted a wide variety of banking institutions to invest in ETCs. Inasmuch as these institutions are regulated by a number of different governmental agencies, S. 734 required a number of general regulatory provisions. H.R. 6016, reported by the House Committee on Banking, Finance and Urban Affairs, on the other hand, elected to restrict banking institution investment in ETCs to bank holding companies and bankers' banks, and therefore constructed its

version of this legislation as an amendment to the Bank Holding Company Act of 1956 (treating bankers' banks as holding companies for purposes of this Act). As a result, the various constraints on bank holding company activities already in the Bank Holding Company Act would also automatically apply to invest in ETCs, and it was not necessary to repeat them in the House version of the legislation. Similarly, the restriction on investment to bank holding companies allowed the House to dispense with much of the regulatory complexity of the Senate bill.

In conference, the managers on the part of the Senate, recognizing the House's preference for channeling risks of this kind through holding companies rather than through banks directly, agreed to recede to the House on most basic structural issues, with certain modifications.

As a result, the provisions of the House amendment relating to the amount of bank holding company capital and surplus which can be invested in or loaned to an ETC, the 60-day disapproval procedure on the part of the Federal Reserve Board for such proposed investments, including the notification provision, and the exemption from Section 23A of the Federal Reserve Act are all incorporated in the conference agreement. Similarly, the Senate provisions relating to judicial review, rulemaking authority, state banking laws, and protection of the safety and soundness of the bank, are all deleted, largely because they are covered by various sections of the Bank Holding Company Act which will now apply to investment in ETCs by virtue of the conferees' decision to accept the House approach of placing ETC within that Act. The Senate also receded to the House and agreed to eliminate the restriction on an ETC having the same name as its bank organization parent.

There were, however, several areas where the conferees made significant modifications in the approach of the House amendment.

GUIDANCE TO THE FEDERAL RESERVE BOARD

Most important in that regard is the decision of the conferees to provide additional guidance to the Federal Reserve Board in administering this Act through the addition of a new Section 202 at the beginning of Title II. This section declares it to be the purpose of Title II to provide for meaningful and effective participation by bank holding companies in the financing and development of export trading companies, and that, specifically, the Board should pursue regulatory policies that:

(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to compete with similar foreign-owned institutions in the United States and abroad.

(2) afford to United States commerce, industry and agriculture, especially small and medium-size firms, a means of exporting at all times;

(3) foster the participation by regional and smaller banks in the development of export trading companies, and

(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company's needs."

These objectives, along with the purpose set forth in Title I of the Act, if properly pursued by the Federal Reserve Board, will guarantee the development of effective, "full-service" trading companies with bank holding company involvement that will effectively and aggressively market American products and will not be disadvantaged or limited in competing with foreign-owned export trading companies or with ETCs owned by nonbank firms.

The new section 4(c)(14)(A)(iv) of the Bank Holding Company Act created by the conference substitute provides for disapproval of proposed investments in an export trading company only if the Board determines:

(1) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

(2) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company; or

(3) the bank holding company fails to furnish the information required by Board regulations.

The second criterion above is a modification proposed by the Senate conferees and accepted by the House. The original language of the House amendment referred only to the "financial or managerial resources of the companies involved." However, the legislative history of that amendment suggested a narrower intent, i.e., "risk to the bank".

In order to reach the intent of the amendment more closely, the conferees agreed on revised wording to clarify the expectation that the Board will focus on risk to the bank, as opposed to other affiliates, and on the specific impact the proposed investment will have on the bank.

DEFINITION OF EXPORT TRADING COMPANY

It is clearly the purpose of both the House and Senate to stimulate the establishment of export trading companies to improve U.S. export capabilities with corresponding favorable effects on American balance of trade, economic growth and employment. The major public benefit sought by enactment of export trading company legislation is jobs for Americans through the promotion of exports.

The necessity of export expansion has never been more obvious. The House amendment to S. 734 would require that a bank-affiliated export trading company be operated "exclusively" for purposes of exporting goods and services produced in the United States and would have permitted importing that was incidental to export activities—that is an import agreement that enhanced export activities would be acceptable. The use of the term "exclusively" was designed to ensure the export promotion and job creation character of the legislation.

The House, however, receded to the Senate by adopting the Senate's use of the term "principally" in defining the purposes of a bank-affiliated export trading company. This is no way implies a reduced commitment to the bill's purpose: U.S. export promotion. On the contrary, while it is understood that ETCs will periodically have to engage in importing, barter, third party trade, and related activities, the managers intend that such activity be conducted only to further the purposes of the Act. The managers do not expect the preponderance of ETC activity to involve importing.

ETC affiliation with banks represents a breach of the traditional separation of banking and commerce and has necessitated provision for a minimal but adequate regulatory presence. It is the intent of the managers that the regulatory authority, in addition to facilitating bank-related investments in ETCs, examine, supervise, and regulate ETCs in such a way as to assure that bank-affiliated ETCs operate in a manner consistent with the Congressional intent: that ETCs promote, increase, and maximize U.S. exports.

PRODUCT MODIFICATION

The conferees retained the prohibitions on manufacturing and agricultural production that were included in both the Senate bill and the House amendment. The export trading company is intended to be a service-providing organization and not the producer of the products it is exporting. The Senate, however, receded to the House amendment permitting the ETC to undertake incidental product modification, including repackaging, reassembling or extracting byproducts, as is necessary to enable U.S. goods or services to conform with foreign country requirements or to facilitate their sale in foreign countries. The ETC would also be permitted to provide any service deemed necessary to protect it from the additional risk incurred by such product modification.

JOINT VENTURES

The conferees intend that this title not affect the ability of individuals and organizations to form ETCs. State and local government entities, including port authorities, industrial development corporations, and other non-profit organizations, could be an important source of overall export expansion and of the developemnt of innovative export programs keyed to local, state, and regional needs. In addition, other organizations, for example, agricultural cooperatives, have similar experience and needs. This title in no way affects the ability of such organizations to continue these efforts including their ability to organize, own, participate in or support ETCs. This title addresses only the question of whether banking organizations should be authorized to invest in ETCs and, if so, the restrictions which would be placed on ETCs sponsored by such banking organizations.

The conferees that this title does not preclude a banking organization that is authorized to invest in an ETC from engaging in a joint venture, partnership or other cooperative arrangement with other authorized banking organizations or other nonbanking firms to organize an ETC. Such cooperative arrangements are in fact to be encouraged. There are numerous firms and organizations which may want to from an ETC but feel that they lack either investment capital or expertise. A banking organization may well be able to provide such assistance through a joint venture or partnership arrangement with these other firms. The ETC so supported, however, would be subject to the restrictions contained in this legislation inasmuch as a banking organization is investing in that ETC.

PERMITTED SERVICES

Both the Senate bill and the House amendment contained a list of services which a bank-affiliated export trading company is permitted to provide. Those lists were identical except for three elements: (1) the Senate bill used the phrase "including, but not limited to" to make clear the list is a non-exclusive one; (2) the House amendment contained an explicit reference to "taking title"; and (3) the Senate bill's list included "insurance".

The House by receding to the Senate on the first issue, insured that the list of permitted services is a non-exclusive one. With regard to the second issue, "taking of title", the Senate receded to the House. The Senate bill would have implicitly permitted such an activity. To eliminate any possible

ambiguity, the explicit authority contained in the House version was adopted.

Regarding "insurance", the House receded to the Senate with an amendment. The conferees determined it to be appropriate to permit bank holding companies to provide insurance on risks resident or located, or activities performed, outside of the United States. Since a large proportion of cargos moving overseas originate at a point that is located away from the port of shipment, it has become customary for insurance carriers providing insurance for such cargos to endorse their policies to cover cargos for export from the point of their origin in final transit to their destination, including ordinary delay and storage. Such ocean cargo "warehouse to warehouse" coverages provide insurance protection for all risks related to the land, air, or water transportation of the cargo in the United States as well as during the overseas transportation. In addition to permitting export trading companies to provide insurance on risks outside of the United States, therefore, the conferees determined that it would facilitate the provision of export trade services for export trading companies to provide ocean cargo "warehouse to warehouse" insurance as well, and accordingly amended the definition of insurance activities permitted in support of export trade services, reflecting the conferees' decision.

The conferees also considered the possibility of expanding the range of institutions eligible to invest in ETCs to include Edge Act Corporations. This proposal was included in the Senate bill because the expertise and experience of Edge Act Corporations in international trade matters made it logical to encourage their involvement in ETCs. On the other hand, the conferees were also concerned about the added potential risk to a bank if an ETC were formed by an Edge Act Corporation that was a subsidiary of a bank. It was the strong view of the House that the best protection for the bank and its depositors was to channel all trading company activity through the bankers' bank and bank holding company structures. Accordingly, the conferees agreed that Edge Act Corporations that are subsidiaries of bankholding companies are eligible to invest in ETCs. The inclusion of bankers' banks as eligible investors—a provision of both the Senate bill and the House amendment, will also facilitate the involvement of smaller banks in ETCs.

The conferees also discussed whether the mechanism for Board approval of a proposed investment should apply only to investments that would give the holding company control of the ETC, as in the Senate bill, or whether the standard in the Bank Holding Company Act requiring Board consideration of any investment constituting over 5 percent of an export trading company should apply.

In this case, the conferees, recognizing the newness of this concept, opted for the stricter House approach contained in the Bank Holding Company Act. In doing so, however, the conferees stressed their intent that the Board, as soon as possible, both decentralize this review process to the level of the Federal Reserve District Banks and consider providing guidelines for smaller investments (those that would result in a controlling interest for the holding company) that would minimize the review process and reduce the regulatory burden on the Board.

SECTION 23A

The Senate receded to the House on the exemption of bank-affiliated export trading companies from the provisions of Section 23A of the Federal Reserve Act. During the start-up phase in an effort to encourage maximum bank participation in export trading company activities, the conferees believe that the overall limitation of ten percent of the consolidated capital and surplus of the bank holding company, on extensions of credit to an affiliated export trading company, would adequately protect affiliated banks from excessive risks, and that the exemption from the collateral requirement of existing law is necessary in view of the type of assets most ETC's would have. The conferees, however, intend to review the decision in connection with an imminent major revision of 23A either as part of a possible conference on legislation separately passed by the Senate or at such time as revisions to 23A receive final consideration by the Congress.

REPORTS

Section 205 of the substitute contains the Senate bill's provision calling for a report by the Federal Reserve two years after the enactment of this Act on the implementation of the banking provisions, recommendations for further changes in U.S. law to facilitate the financing of U.S. exports, and recommendations on the effects of ownership of U.S. banks by foreign banking organizations affiliated with trading companies doing business in the United States.

EXPORT-IMPORT BANK

The House receded with an amendment to the Senate on the latter's provision establishing a program of Export-Import Bank guarantees for loans extended by financial institutions or other creditors to ETCs or other exporters, where such loans are secured by export accounts receivable or inventories of exportable goods. The House amendment to the Senate provision clarifies the eligibility of public creditors (port authorities, agencies of state and local governments, and governmental instrumentalities) as well as private creditors for Export-Import bank guarantees.

BANKERS' ACCEPTANCES

Th conferees want to emphasize strongly that the adoption of this long overdue liberalization of the present limits on bankers' acceptance in on way is intended to impinge upon or restrict the inherent powers of the Federal Reserve Board to issue appropriate regulations to prevent circumvention of the new liberalized limits through the imprudent use of participation agreements. The conferees have been advised of an ongoing analysis by the Federal Financial Institutions Examination Council on the proper treatment of participation of bankers' acceptances, preparatory to the development of a proposed united policy approach by each Federal regulatory agency. The conferees encourage this action to the extent it is consistent with and in furtherance of the language, history, and purposes of this legislation or demonstrable safety and soundness concerns. In this regard, the conferees require that the Council report to the respective Committees of jurisdiction within 18 months after the date of enactment, the results of its analysis, a summary of any individual regulatory agency action viewed as needed, and any legislative recommendations relating to safety and soundness considerations. In the meantime, however, the conferees stress that no action should be taken, either by regulation or other requirement to preclude the use of bankers' acceptances through the use of participations, as contemplated by this legislation, by the widest number of American banks.

TITLE III—EXPORT TRADE CERTIFICATES OF REVIEW

The House and Senate Conferees agreed upon a substitute amendment for Title III of S. 734 which incorporates elements from both S. 734 and the House Amendment to S. 734.

Section 301 is a statement that the purpose of this Title is to promote U.S. export trade by affording U.S. business an export trade certificate of review process.

Section 302 provides the procedures a person must follow to apply for a certificate of review. To obtain a certificate of review, any individual, firm, partnership, association, public or private corporation, or other legal entity, including a public or private body, submits a written application to the Secretary of Commerce. The Secretary of Commerce shall forward applications and other specified information to the Attorney General within 7 days of receipt. All applications must be in a form and contain all information required by regulation.

Within 10 days of receiving the application, the Secretary of Commerce shall publish in the Federal Register a notice identifying the applicant and describing the conduct for which certification is sought.

Section 303(a) provides that a certificate shall be issued to a person who establishes that its proposed conduct will (1) result in neither a substantial lessening of competition or substantial restraint of trade within the United States nor constitute a substantial restraint of the export trade of any competitor of the applicant; (2) not unreasonably enhance, stabilize, or depress prices within the United States; (3) not constitute unfair methods of competition against competitors engaged in the export trade of goods or services exported by the applicant; and (4) not reasonably be expected to result in the consumption or resale in the United States of goods or services exported by the applicant. The Conferees intend that the standards set forth in this subsection encompass the full range of the antitrust laws.

Section 303(b) provides that within 90 days, the Secretary must determine whether the applicant's export trade, export trade activities, and methods of operation meet the standards of Section 303(a). The Secretary shall not issue the certificate without the concurrence of the Attorney General that the standards of Section 303 are met. The certificate must specify the export trade, export trade activities, and methods of operation certified, the person to whom the certificate is issued, and any terms and conditions deemed necessary by the Secretary or the Attorney General to assure compliance with the standards of subsection (a).

Section 303(c) provides for expedited certification where necessary; however, no certificate may issue before 30 days from the date of publication of the Federal Register notice, whether or not the application is expedited.

Section 303(d)(1) provides that the Secretary shall notify the applicant of an adverse determination and the reasons therefore.

Section 303(d) permits an applicant to request reconsideration of the Secretary's decision. The Secretary, with the concurrence of the Attorney General, shall respond within 30 days.

Section 303(e) provides for the return of documents submitted in connection with an application upon written request of an applicant whose certificate of review has been denied.

Section 303(f) provides that any aspect of a certificate procured by fraud is void ab initio.

Section 304(a) provides that the holder of any certificate of review is obligated to report to the Secretary changes relevant to the matters contained in the certificate and may seek an amendment to the certificate to reflect any necessary change. An applica-

tion for amendment is to be treated as an application for the issuance of a certificate.

Section 304(b)(1) provides that the Secretary shall, at his own initiative or at the request of the Attorney General, seek information from a certificate-holder to resolve any uncertainty concerning compliance. Failure to comply with such a request is grounds for modification or revocation of the certificate pursuant to subsection (b)(a).

Section 304(b)(2) provides that the Secretary of Commerce, at his own initiative or at the request of the Attorney General, may seek revocation of the certificate.

Section 304(b)(3) is intended to assure that the Attorney General investigate persons other than the certificate-holder through use of the civil investigative demand as set forth in the Antitrust Civil Process Act as amended (15 U.S.C. 1311 et seq.) regarding activities which may not be in compliance with the standards in section 303(a). If, upon an investigation, the Attorney General determines that the export trade activities or methods of operation of the certificate-holder no longer comply with section 303(a) standards, he shall advise the Secretary who then must initiate a revocation or modification proceeding under subsection (b)(2).

Section 305(a) provides that a review of a grant or denial of an application for a certificate or an amendment thereto or revocation or modification thereof of any person aggrieved by such determination if such suit is brought within 30 days of the determination. Normally, the administrative record shall be adequate so that it will not be necessary to supplement it with additional evidence.

The Senate bill required, prior to revocation or modification of a certificate, a hearing as appropriate under the circumstances. The House bill did not require a hearing. In following the House approach, the Conferees understood that, should the Secretary nevertheless establish a hearing procedure, S. 734 would not require use of the procedures of the Administrative Procedures Act.

Section 305(b) provides that no action by the Secretary or Attorney General under this title, except for an action under Subsection 305(a), is subject to judicial review.

Section 305(c) makes explicit that any denial by the Secretary, in whole or in part, of a proposal for issuance of a certificate, or amendment thereto, or any determination by the Secretary to revoke the application, or reasons therefor, is not admissible in evidence in any administrative or judicial proceeding in support of a claim under the antitrust laws as defined in this title.

Subsection 306(a) protects a certificate-holder from criminal and civil antitrust actions, under both federal and state laws, whenever the conduct that forms the basis of the action is specified in, and complies with, the terms of the certificate. Conduct which falls outside the scope of, or violates the terms of, the certificate is ultra vires and would not be protected. Such conduct would remain fully subject to criminal sanctions as well as both private and governmental civil enforcement suits under the antitrust laws.

The Conferees agreed that the protections conferred by a certificate extend to all members of a certified entity provided that each member is listed on the certificate.

Section 306(b)(1) permits persons injured by the conduct of a certificate-holder to bring suit for injunctive relief and single damages for a violation of the standards set forth in Section 303(a). Pursuant to section/306(b)(2), any such suit must be brought within two years of the date the plaintiff has notice of the violation. Section 306(b)(3) accords a presumption of legality to persons operating within the terms of conduct specified in a certificate. Subsection (b)(4) permits a certificate holder to recover the cost of defending the suit (including reasonable attorneys fees) if the claimant fails to establish that the standards of section 303(a) have been violated.

Section 306(b)(1) provides that all procedures applicable to antitrust litigation, including laws and rules to expedite a proceeding or to prevent dilatory tactics, apply to actions brought under this title. The standards under section 303(a), the remedies under this subsection, as well as the provisions concerning the statute of limitations, a presumption of validity, and the awarding of costs to the certificate holder, including attorneys fees, remain the exclusive provision governing actions under this Act. Moreover, section 16 of the Clayton Act, so far as it pertains to injunctive actions for threatened (as opposed to actual) injury or to violations of the antitrust laws such as sections 2, 3, 7, and 8 of the Clayton Act, are inapplicable to actions authorized by section 306 of this Act.

Section 306(b)(5) permits the Attorney General, notwithstanding the limitations in section 306(a)(1), to bring suit pursuant to Section 15 of the Clayton Act (15 U.S.C. 25) to enjoin conduct threatening clear and irreparable harm to the national interest.

Both the House and Senate versions contemplated the promulgation of guidelines to assist applicants, potential applicants, and the public in understanding the issuing authority's interpretation of the certification criteria. The Conferees agreed upon section 307, which is similar to the House version, except that the Secretary issues the guidelines. Under section 307, the Secretary, with the concurrence of the Attorney General, may publish guidelines that describe conduct with respect to which determinations have been made or might be made, with a summary of the factual and legal bases underlying the determinations. The guidelines may be based upon real or hypothetical cases. Because the purpose of this section is to disseminate information, the Secretary is not required to use rulemaking procedures, although he may if he so chooses.

The Conferees agreed upon section 308, which tracks the Senate version of a similar provision. Under section 307, every person to whom a certificate has been issued shall submit to the Secretary an annual report, in such form and at such time that he may require, that updates, where necessary, the information required by section 302(a).

The Conferees agreed upon section 309, which tracks version in the House. Under subsection 30.9(a), all information submitted by a person in connection with the issuance, amendment, or revocation of a certificate of review is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552. In addition, under subsection (b)(1), no officer or employee of the United State shall disclose commerical or financial information submitted in connection with the issuance, amendment or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information. This limitation is subsect to six exceptions, contained in subparagraph 309(b)(2). The first exception in subsection 309(b)(2)(A), covers requests of Congress or a committee of Congress. This provision would not authorize release to an individual Member of Congress, but would authorize release to a Chair acting for the Committee or Subcommittee. The Conferees understand that Committees will exercise appropriate care to protect confidential information. The second exception, subparagraph 309(b)(2)(B), permits disclosure in a judicial or administrative proceeding subject to an appropriate protective order; the third exception, subparagraph 309(b)(2)(C), permits disclosure with the consent of the submitting party; the forth exception, suparagraph 309(b)(2)(D), permits necessary disclosures in making determinations on applications; the fifth exception, subparagraph 309(b)(2)(E), permits disclosure in accordance with statute; and the final exception, subparagraph 309(b)(2)(F), permits disclosure to agencies of the United States and the States if the receiving agency will agree to the limitation contained in subparagraph (A) through (E).

Both the House and Senate versions contemplated the issuance of implementing rules. The Conferees agreed on section 310, which directs the Secretary, with the concurrence of the Attorney General, to promulgate rules and regulations necessary to carry out the purposes of the Act.

Both the Senate and the House versions defined important terms. The Conferees agreed to include, in section 311, a definition section which adopts elements from both versions as well as certain additional definitions necessary to ensure proper interpretation of Title III.

The Conferees agreed upon section 312, which is similar to the effective date provision in the House version. Under subsection 312(a), all provisions except sections 302 and 303 take effect immediately upon enactment of the legislation. Under subsection 312(b), sections 302 and 303 the application and issuance provisions, take effect 90 days after the rules are promulgated under section 310.

TITLE IV—FOREIGN TRADE ANTITTRUST IMPROVEMENTS

The House and Senate Conferees agreed upon a new Title IV which supplements the antitrust certification provisions (Title III).

The new title incorporates two sections from H.R. 5235, passed by the House on August 3, 1982. These sections modify the Sherman Act and Section 5 of the Federal Trade Commission Act to require a "direct, substantial, and reasonable foreseeable" effect on commerce in the United States, or on the export commerce of a U.S. resident, as a jurisdictional threshold for enforcement actions.

For title I of the House amendment and modifications committed to conference:

CLEMENT J. ZABLOCKI,
JONATHAN BINGHAM,
DENNIS E. ECKART,
DON BONKER,
HOWARD WOLPE,
WM. BROOMFIELD,
ROBERT J. LAGOMARSINO,
ARLEN ERDAHL,
BENJAMIN A. GILMAN,
MILLICENT FENWICK,

For title II of the House amendment and modifications committed to conference:

FERNAND ST GERMAIN,
FRANK ANNUNZIO,
JOE MINISH,
JOHN J. LAFALCE,
DOUG BARNARD, JR.
J. W. STANTON,
CHALMERS P. WYLIE,
STEWART B. MCKINNEY,
JIM LEACH.

For title III of the House amendment and modifications committed to conference:

PETER W. RODINO,
BILL HUGHES,
ROBERT MCCLORY,
M. CALDWELL BUTLER,

Managers on the Part of the House.

JAKE GARN,
JOHN HEINZ,
WILLIAM ARMSTRONG,
JOHN H. CHAFEE,
JOHN C. DANFORTH,
DON RIEGLE,
BILL PROXMIRE,
CHRISTOPHER J. DODD,
ALAN DIXON,
Managers on the Part of the Senate.

□ 1600

LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I take this time for the purpose of inquiring of either the Chair or the distinguished majority leader the balance of the program, at least as currently scheduled.

I am happy to yield to my friend from Texas, the distinguished majority leader.

Mr. WRIGHT. I thank the gentleman for yielding.

In response to the distinguished minority leader, it is the purpose of the Chair at this time to take unanimous-consent requests which have been cleared on both sides and on which there is no controversy.

As we understand it, there are some four that fit in that category.

Immediately following those unanimous-consent requests, it is the purpose of the Chair to recognize the gentleman from Mississippi (Mr. WHITTEN), the chairman of the Committee on Appropriations, in order that he may bring up the conference report on the continuing appropriations.

Then other available conference reports will follow. There may be some conference reports that would be ready for our consideration.

Mr. MICHEL. Mr. Speaker, I thank the distinguished majority leader.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2330) entitled "An act to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes."

The message also announced that the Senate agrees to the amendments of the House with amendments to bills of the Senate of the following titles:

S. 2273. An act to amend section 7 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7706) to extend authorizations for appropriations, and for other purposes;

S. 2420. An act to protect victims of crime; and

S. 2577. An act to authorize appropriations for environmental research, development, and demonstrations for the fiscal year 1983, and for other purposes.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 1018) entitled "An act to protect and conserve fish and wildlife resources, and for other purposes," agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. STAFFORD, Mr. CHAFEE, Mr. GORTON, Mr. RANDOLPH, and Mr. MOYNIHAN to be the conferees on the part of the Senate.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 1371. An act to amend section 12 of the Contract Disputes Act of 1978;

H.R. 3467. An act to authorize appropriations under the Arms Control and Disarmament Act, and for other purposes;

H.R. 5204. An act to provide for appointment and authority of the Supreme Court Police, *and for other purposes; and*

H.R. 6946. An act to amend title 18 of the United States Code to provide penalties for certain false identification related crimes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 6946) entitled "An act to amend title 18 of the United States Code to provide penalties for certain false identification related crimes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. THURMOND, Mr. LAXALT, Mr. HATCH, Mr. SIMPSON, Mr. HUMPHREY, Mr. BIDEN, Mr. DECONCINI, and Mr. HEFLIN to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills and joint resolutions of the following titles, in which the concurrence of the House is requested:

S. 2574. An act to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes;

S. 2671. An act to provide for the establishment of a Commission on the Bicentennial of the Constitution;

S. 3002. An act to increase the authorization of appropriations for the Allen J. Ellender fellowship program, and for other purposes;

S.J. Res. 228. Joint resolution to provide for the designation of the week beginning on October 24, 1982, as "National Tourette Syndrome Awareness Week";

S.J. Res. 236. Joint resolution to designate the week of October 24 through 28, 1982, as "National Water Resources Week";

S.J. Res. 237. Joint resolution designating November 14, 1982, as "National Retired Teachers Day";

S.J. Res. 260. Joint resolution to designate the period commencing January 1, 1983, and ending December 31, as the Tricentennial Anniversary Year of German Settlement in America";

S.J. Res. 261. Joint resolution to designate "National Housing Week"; and

S.J. Res. 262. Joint resolution to designate the month of November 1982 as "National *Christmas Seal Month.*"

The message also announced that the Secretary of the Senate be directed to return to the House of Representatives, pursuant to House Resolution 605, the bill (S. 1210) entitled "An act amending the Environmental Quality Improvement Act of 1970," together with all accompanying papers.

PREFERENTIAL TREATMENT IN ADMISSION OF CERTAIN CHILDREN OF U.S. CITIZENS

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the *Senate* bill (S. 1698) to amend the Immigration and Nationality Act to provide preferential treatment in the admission of certain *children of U.S. citizens,* and ask for its immediate consideration in the *House.*

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

Mr. FISH. Mr. Speaker, reserving the right to object, and I do so only with great joy that we are here at this point, to ask the chairman of the Subcommittee on Immigration, Refugees, and International Law of the Committee on Judiciary if he would explain S. 1698.

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield to me?

Mr. FISH. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Speaker, let me say to my friend from New York, the ranking member on our subcommittee, that what the gentleman from Kentucky is going to do in a few more legislative steps is to bring to the attention of the House the so-called Amerasian bill in order that, before we leave for the pre-election recess, we will have passed and made a matter of law a method by which these young children in Southeast Asia, fathered by U.S. citizens, will be able to come to this country.

Mr. FISH. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the Senate bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by inserting at the end thereof the following new subsection:

"(h)(1) Any alien claiming to be an alien described in paragraph (2) of this subsection *(or any person on behalf of such an alien)* may file a petition with the Attorney General for classification under section 201(b), 203(a)(1), or 203(a)(4), as appropriate. After an investigation of the facts of each case the Attorney General shall, if he has reason to believe that the alien is an alien described in paragraph 2 of this subsection, approve the petition and forward one copy to the Department of State.

to second-guess decisions by other doctors on matters that affect hospital costs, such as whether to operate on a heart patient. Even HEW has admitted that the PSROs have failed to save money, but they're still around.

The reasons why regulatory failures are not scrapped are instructive. The political thrust for such efforts derives from a knowledge by their advocates that health care cannot be fully nationalized in this country until some way is discovered to control health care costs. The experience with direct government operation of VA and public health hospitals has shown that to be the route to gross inefficiency. And it is difficult to destroy the decisionmaking powers of doctors short of conscripting them.

But despite such failures, it still is argued by Senator Kennedy and HEW bureaucrats that government control of health care must be extended. They insist that when the government finally obtains full control of hospitalization insurance, it will finally be able to hold down costs. They are not deterred by the failure of national health systems elsewhere to control costs and maintain quality. In Britain, private health care is returning to vogue for this reason.

Mr. Carter is trying to deal with these conflicts and pressures with his proposed "cap." But as the above analysis suggests, it is unlikely that the cap can generate anything but added regulatory costs. Moreover, it will be patently unfair, penalizing the nation's best hospitals—the ones that have been the most efficiently managed, that provide teaching services and that offer the most advanced technological services. Working capital problems will be further aggravated, bringing about financial collapse for some hospitals. Medical advancement will slow. Patients will not get more for less, as the administration implies. They will get less for more.

We can think of few areas where the effect of federal intervention has been more counter-productive. And yet the surest way for its advocates to succeed is through destruction of the present system, which is well underway. The hospital costs issue is a reflection of a larger problem that we have not yet begun to solve.

RECOGNITION OF SENATOR DANFORTH

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Missouri (Mr. DANFORTH) is recognized for not to exceed 15 minutes.

S. 864—EXPORT TRADE ASSOCIATION ACT OF 1979

Mr. DANFORTH. Mr. President, today I am pleased to introduce, along with Senator BENTSEN, Senator JAVITS, and Senator MATHIAS, the Export Trade Association Act of 1979—the latest in a series of measures which I am proposing, in conjunction with various of my colleagues, to help reverse the mushrooming balance of trade deficits that this Nation has registered since 1970.

On January 25, 1979, Senator BENTSEN, I, and 10 of our colleagues, introduced the International Trade Laws Reform Act of 1979, S. 223. The purpose of that bill was to assure that our Nation would have the proper and effective tools needed to counter unfair and illegal trade practices of foreign competitors. On March 21, I introduced S. 700, a bill to encourage corporations to spend more money on research and development by granting a 10-percent tax credit for such expenditures.

Today, we offer a proposal that will encourage more American firms to market their goods and services abroad and enable them to compete more aggressively with their foreign counterparts.

Before I address myself to the particulars of the bill, let me provide a brief historical background of the current law which this bill will amend.

In 1916 the Federal Trade Commission published a report that stated that American manufacturers and producers were disadvantaged in attempting to enter foreign markets individually because of strong combinations of foreign competitors and organized buyers.

In response to the findings of the FTC report, Congress passed in 1918 what has come to be known as the Webb-Pomerene Act. This law exempts from U.S. antitrust laws any association established "for the sole purpose of engaging in export trade," as long as the association, its acts, or any agreements into which the association enters, do not: First, restrain trade within the United States; second, restrain the export trade of any domestic competitor of the association; or third, artificially or intentionally influence prices within the United States of commodities of the class exported by such association.

In enacting the Webb-Pomerene Act, Congress envisioned an eager American business community availing itself of the opportunity to pool its facilities, resources, and expertise in such a fashion as to implement an ambitious joint exporting program. That vision never materialized.

At their high-water mark between 1930 and 1935, Webb-Pomerene associations numbered 57 and accounted for approximately 19 percent of total U.S. exports. Today the number of associations has dwindled to 33 and their share of total U.S. exports has dipped to less than 2 percent.

The reasons for this poor showing are many. First, the vast majority of the 250 or so Webb-Pomerene associations formed over the last 60 years lacked sufficient product-market domination to exert foreign market price control and membership discipline. Second, the business community traditionally has placed top priority on tapping the vast domestic market and has been much slower to focus on the prospects overseas. Third, the ever expanding U.S. service industries have been excluded from qualifying for the act's antitrust exemption. Fourth, and perhaps most important, the Department of Justice, and to a lesser extent the FTC, have been perceived by the business community as exhibiting a thinly veiled hostility toward Webb-Pomerene associations. Therefore, the threat of antitrust litigation has served as a deterrent to broader utilization of the Webb-Pomerene Act.

All in all, there remains the strong impression among most parties that the Webb-Pomerene Act is a quaint relic of the past—a cracked plate that is not good enough to be brought out for company and yet not so useless as to be thrown away. This is regrettable, particularly at a time when we are suffering a $30 billion trade deficit.

Therefore, I propose that we modify the Webb-Pomerene Act in a way that permits many more American firms to make use of its updated provisions to promote exports. Although it is not possible to estimate the impact of such changes on exports, just one U.S. industry (National Construction Association) estimated sales increases of $2 billion annually if its members could operate as a Webb-Pomerene Association.

Mr. President, this bill does the following:

First. It makes the provisions of the Webb-Pomerene Act explicitly applicable to the exportation of services (the National Commission for the Review of Antitrust Laws and Procedures made this same recommendation in its report to the President earlier this year);

Second. It expands and clarifies the act's antitrust exemption for export trade associations;

Third. It requires that the antitrust immunity be made contingent upon a preclearance procedure;

Fourth. It transfers the administration of the act from the FTC to the Department of Commerce;

Fifth. It creates within the Department of Commerce an office to promote the formation of export trade associations; and

Sixth. It provides for the establishment of a task force whose purpose will be to evaluate the effectiveness of the Webb-Pomerene Act in increasing U.S. exports and to make recommendations regarding its future to the President.

This past September, President Carter announced his initial steps toward the formulation of a coordinated national export policy. At that time, he called for a reduction of domestic barriers to exports. He urged that the laws and policies affecting the international business community, including the antitrust laws, be administered firmly and fairly but with "a greater sensitivity to the importance of exports than has been the case in the past." This bill seeks to give some teeth to that proclamation. The changes in the Webb-Pomerene Act that we advocate will assure a more hospitable attitude toward those whose important task it is to push American goods and services abroad. At the same time the provisions which we offer for consideration today are tough enough to allow the appropriate authorities to uncover and terminate any domestic anticompetitive spillover from the operations of export trade associations.

Mr. President, this bill alone is not going to solve the problem of our trade deficit. It is only a small step, but it is a step in the right direction.

Mr. President, I ask unanimous consent that the following material be printed at this point in the RECORD. The text of the bill and a document entitled "Export Trade Association Act of 1979, Section-by-Section Explanation."

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 864

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Export Trade Association Act of 1979".

SEC. 2. FINDINGS; DECLARATION OF PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) in 1978 the United States suffered the largest trade deficit in its history, amounting to approximately $30,000,000,000;

(2) the trade deficit has contributed to the decline of the dollar on international currency markets and has led to widespread public concern about the strength of the dollar;

(3) the exports of the American economy are responsible for creating and maintaining 1 out of every 9 manufacturing jobs in the United States and for generating 1 out of every 7 dollars of total United States goods produced;

(4) foreign-government-owned and foreign-government-subsidized entities compete directly with private United States exporters for shares of the world market;

(5) between 1968 and 1977 the United States' share of total world exports fell from 19 percent to 13 percent;

(6) service-related industries are vital to the well-being of the American economy inasmuch as they create jobs for 7 out of every 10 Americans, provide 65 percent of the Nation's gross national product, and represent a small but rapidly rising percentage of United States international trade;

(7) small and medium-sized firms are prime beneficiaries of joint exporting, through pooling of technical expertise, help in achieving economies of scale, and assistance in competing effectively in foreign markets; and

(8) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports.

(b) PURPOSE.—It is the purpose of this Act to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Chairman of the Federal Trade Commission to the Secretary of Commerce.

SEC. 3. DEFINITIONS.

The Webb-Pomerene Act (15 U.S.C. 61-66) is amended by striking out the first section and inserting in lieu thereof the following:

"SECTION 1. DEFINITIONS.

"As used in this Act—

"(1) EXPORT TRADE.—The term 'export trade' means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported from the United States or any territory thereof to any foreign nation.

"(2) SERVICE.—The term 'service' means intangible economic output, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, and communication services.

"(3) EXPORT TRADE ACTIVITIES.—The term 'export trade activities' includes any activities or agreements which are incidental to export trade.

"(4) TRADE WITHIN THE UNITED STATES.—The term 'trade within the United States' means trade between or among—

"(A) the several States of the United States,

"(B) the Territories of the United States, or

"(C) the District of Columbia and the several States or Territories of the United States.

"(5) ASSOCIATION.—The term 'association' means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations which are created under and exist pursuant to the laws of any State or of the United States. The term 'association' does not include a combination of any of the above with a subsidiary located in the United States which is controlled by a foreign entity.

"(6) ANTITRUST LAWS.—The term 'antitrust laws' means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12) and section 4 of the Federal Trade Commission Act (15 U.S.C. 44), any other law of the United States in *pari materia* with those laws, and any State antitrust or unfair competition law.

"(7) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(8) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(9) CHAIRMAN.—The term 'Chairman' means the Chairman of the Federal Trade Commission.".

SEC. 4. ANTITRUST EXEMPTION.

Section 2 of the Webb-Pomerene Act (15 U.S.C. 62) is amended to read as follows:

"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

"(a) GENERAL RULE.—Any association certified according to the procedures set forth in this Act, entered into for the sole purpose of engaging in export trade, and engaged in such export trade, is exempt from the application of the antitrust laws if the association and the export trade activities in which it and its members are engaged or propose to be engaged—

"(1) serve to preserve or promote export trade;

"(2) result in neither a substantial restraint of competition within the United States nor a substantial restraint of the export trade of any domestic competitor of such association;

"(3) do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association;

"(4) do not constitute unfair methods of competition against domestic competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association;

"(5) do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or its members.

"(6) do not constitute trade or commerce in the licensing of patents, technology, trademarks, or knowhow, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or its members.

"(b) ENFORCEMENT BY FEDERAL AGENCIES ONLY.—

"(1) STANDING.—No person other than a department or agency of the United States, or an officer of the United States acting in his official capacity, shall have standing to bring an action against an association for failure to meet the requirements of subsection (a).

"(2) PETITIONS BY THIRD PARTIES.—Whenever any person has reason to believe that an association fails to meet any requirement of subsection (a), he may file a petition, alleging such failure and requesting the commencement of appropriate enforcement action, with the Secretary. Unless the Secretary, in consultation with the Attorney General and Chairman, determines that the petition does not make allegations upon which, if true, an enforcement action could be based, he shall conduct an adjudicatory proceeding in accordance with the provisions of section 554 of title 5, United States Code, for the purpose of determining the truth of the matters alleged. If he determines that the allegations contained in the petition are true, and that they indicate that the association does not meet a requirement of subsection (a), then he shall bring an action against the association under paragraph (3).

"(3) REMEDIES.—Such a department, agency, or officer acting in his official capacity may bring an action for the revocation, in whole or in part, of an association's certification on the ground that it fails, or has failed, to meet a requirement of subsection (a), or to enjoin or restrain an association from engaging in any activity which fails to meet any condition set forth in paragraphs (1) through (6) of subsection (a).

"(4) JURISDICTION.—Any action brought under subsection (b) shall be considered as an action described in section 1337 of title 28, United States Code.".

SEC. 5. AMENDMENT OF SECTIONS 3 AND 4.

(a) CONFORMING CHANGES IN STYLE.—The Webb-Pomerene Act is amended—

(1) by inserting immediately before section 3 (15 U.S.C. 63) the following:

"SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCIATIONS PERMITTED.",

(2) by striking out "Sec. 3. That nothing" in section 3 and inserting in lieu thereof "Nothing",

(3) by inserting immediately before section 4 the following:

"SEC. 4. UNFAIR METHODS OF COMPETITION AGAINST DOMESTIC COMPETITORS PROHIBITED.", and

(4) by striking out "Sec. 4. That the" in section 4 and inserting in lieu thereof "The".

(b) LIMITATION OF UNFAIR COMPETITION PROHIBITION TO DOMESTIC COMPETITORS.—Section 4 of the Act (15 U.S.C. 64) is amended by inserting "domestic" before "competitors".

SEC. 6. ADMINISTRATION; ENFORCEMENT; REPORTS.

(a) IN GENERAL.—The Webb-Pomerene Act is amended by striking out section 5 and inserting in lieu thereof the following sections:

"SEC. 5. CERTIFICATION.

"(a) APPLICATION.—In order to obtain certification as an association engaged solely in export trade, a person shall file with the Secretary a written notice of intent to meet for the purpose of determining the desirability of applying for certification and, within 60 days after such meeting, unless such person has filed with the Secretary a written notice or decision not to apply for certification, a written application for certification setting forth the following:

"(1) The name of the association.

"(2) The location of all of the association's offices or places of business in the United States and abroad.

"(3) The names and addresses of all of the association's officers, stockholders, and members.

"(4) A copy of the certificate or articles of incorporation and bylaws, if the association is a corporation; or a copy of the articles or contract of association, if the association is unincorporated.

"(5) A description of the goods, wares, merchandise, or services which the association or its members export or propose to export.

"(6) An explanation of the domestic and

international conditions, circumstances, and factors which make the association useful for the purpose of promoting the export trade of the described goods, wares, merchandise, or services.

"(7) The methods by which the association conducts or proposes to conduct export trade in the described goods, wares, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association.

"(8) The names of all countries where export trade in the described goods, wares, merchandise, or services is conducted or proposed to be conducted by or through the association.

"(9) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association; the relation of the association to other associations, corporations, partnerships, and individuals; and competition or potential competition, and effects of the association thereon. The Secretary may not request information under this paragraph which is not reasonably available to the person making application or which is not necessary for certification of the prospective association.

"(b) ISSUANCE OF CERTIFICATE.—

"(1) NINETY-DAY PERIOD.—Based upon the information obtained from the application, the Secretary shall certify an association within 90 days after receiving the association's application for certification if the Secretary determines that the association and the proposed export trade activities meet the requirements of section 2 of this Act.

"(2) EXPEDITED CERTIFICATION.—In those instances where the temporary nature of the export trade activities, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of the association which have a significant impact on the association's export trade, make the 90-day period for application approval described in paragraph (1) of this subsection impractical for the person seeking certification as an association, such person may request and may receive expedited action on his application for certification.

"(3) APPEAL OF INITIAL DETERMINATION.—If the Secretary determines not to certify an association which has submitted an application for certification, then he shall—

"(A) notify the association of his determination and the reasons for his determination, and

"(B) upon request made by the association, afford the association an opportunity for a hearing with respect to that determination in accordance with section 557 of title 5, United States Code.

"(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF APPLICATION.—

"(1) VOIDING OF CERTIFICATION.—Whenever there is a material change in—

"(A) the domestic and international conditions, circumstances, and factors which make an association useful for the purposes of promoting the export trade of its goods, wares, merchandise, or services, or

"(B) the association's membership, export trade, export trade activities, or methods of operation which would cause the association to fail to meet any requirement of section 2,

then the association shall apply to the Secretary for an amendment of its certification. If an association fails to apply for an amendment of its certification when required by the preceding sentence, then the certification of the association shall be void as of the date of such material change (as determined by the Secretary).

"(2) AMENDMENT OF APPLICATION.—The request for amendment shall be filed within 30 days after the date of the material change and shall set forth the requested amendment of the application and the reasons for the requested amendment. Any request for the amendment of an application shall be treated in the same manner as an original application for certification. If the request is filed within 30 days after the material change which requires the amendment, and if the requested amendment is approved, then there shall be no interruption in the period for which certification is in effect.

"(3) AMENDMENT UPON RECOMMENDATION OF SECRETARY.—After notifying the association involved, the Secretary may, on his own initiative, or upon recommendation of the Attorney General, the Chairman, or any other person—

"(A) require that an association's certification be amended,

"(B) require that the organization or operation of the association be modified to correspond with the association's certification, or

"(C) revoke, in whole or in part, the certification of the association upon a finding (made in an adjudicatory proceeding held in accordance with section 554 of title 5, United States Code) that the association, its members, or its export trade activities do not meet the requirements of section 2 of this Act.

"SEC. 6. GUIDELINES.

"(a) INITIAL PROPOSED GUIDELINES.—Within 90 days after the enactment of the Export Trade Association Act of 1979, the Secretary, the Attorney General, and the Chairman shall publish proposed guidelines for purposes of determining whether an association, its members, and its export trade activities will meet the requirements of section 2 of this Act.

"(b) PUBLIC COMMENT PERIOD.—Following publication of the proposed guidelines, and any proposed revision of guidelines, interested parties shall have 30 days to comment on the proposed guidelines. The Secretary, the Attorney General, and the Chairman shall review the comments and publish final guidelines within 30 days after the last day on which comments may be made under the preceding sentence.

"(c) PERIODIC REVISION.—After publication of the final guidelines, the Secretary, the Attorney General, and the Chairman shall meet periodically to revise the guidelines as needed.

"(d) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—The promulgation of guidelines under this section shall not be considered rule-making for purposes of subchapter II of chapter 5 of title 5, United States Code, and section 553 of such title shall not apply to their promulgation.

"SEC. 7. ANNUAL REPORTS.

"Every certified association shall submit to the Secretary an annual report, in such form and at such time as he may require, setting forth the information described by section 5(a) of this Act.

"SEC. 8. OFFICE OF EXPORT TRADE IN COMMERCE DEPARTMENT.

"The Secretary shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations through the use of provisions of this Act in a manner consistent with this Act.

"SEC. 9. AUTOMATIC CERTIFICATION FOR EXISTING ASSOCIATIONS.

"The Secretary shall certify any export trade association registered with the Federal Trade Commission as of the date of enactment of the Export Trade Association Act of 1979 if such association, within 180 days after the date of enactment of such Act, files with the Secretary an application for certification as provided for in section 5 of this Act, unless such application shows on its face that the association is not eligible for certification under this Act.

"SEC. 10. CONFIDENTIALITY OF APPLICATION AND ANNUAL REPORT INFORMATION.

"(a) GENERAL RULE.—Applications made under section 5, including amendments to such applications, and annual reports made under section 7 shall be confidential, and, except as authorized by this section, no officer or employee, or former officer or employee, of the United States shall disclose any such application, amendment, or annual report, or any application, amendment or annual report information, obtained by him in any manner in connection with his service as such an officer or employee.

"(b) DISCLOSURE TO FEDERAL OFFICERS OR EMPLOYEES FOR ADMINISTRATION OF OTHER FEDERAL LAWS.—

"(1) INVESTIGATION.—The Secretary shall make an application, amendment, or annual report, or information derived therefrom available, to the extent required by an ex parte order issued by a judge of a United States district court, to officers and employees of a Federal agency personally and directly engaged in, and solely for their use in, preparation for an administrative or judicial proceeding (or investigation which may result in such a proceeding) to which the United States or such agency is or may be a party.

"(2) APPLICATION FOR ORDER.—The head of any Federal agency described in paragraph (1), or, in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, may authorize an application to a United States district court judge for the order referred to in paragraph (1). Upon application, the judge may grant the order if he determines, on the basis of the facts submitted by the applicant, that—

"(A) in the case of a criminal investigation—

"(i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed,

"(ii) there is reason to believe that such application, amendment, annual report, or information derived therefrom is probative evidence of a matter in issue related to the commission of such Act, and

"(iii) the information sought cannot reasonably be obtained from any other source, unless it is determined that, notwithstanding the reasonable availability of the information from another source, the application, amendment or annual report, or information derived therefrom sought constitutes the most probative evidence of a matter in issue relating to the commission of such criminal act, and

"(B) in the case of any other investigation, that—

"(i) such application, amendment or annual report, or information derived therefrom is probative evidence of a matter under investigation,

"(ii) such application, amendment or annual report, or information derived therefrom is or may be material to the administrative or judicial proceeding in connection with which the investigation is being conducted, and

"(iii) the information sought cannot reasonably be obtained from any other source, or, notwithstanding the reasonable availability of the information from another source, the application, amendment or annual report, or information derived there-

from sought constitutes the most probative evidence of a matter in issue relating to the commission of the act being investigated.

"SEC. 11. MODIFICATION OF ASSOCIATIONS TO COMPLY WITH UNITED STATES OBLIGATIONS.

"At such time as the United States undertakes international obligations by treaty or statute, to the extent that the operations of any export trade association, certified under this Act or registered under this Act, before its amendment by the Export Trade Association Act of 1979, are inconsistent with such international obligations, the Secretary may require such association to modify its operations so as to be consistent with such international obligations.

"SEC. 12. REGULATIONS.

"The Secretary, in connection with the Attorney General and the Chairman, shall promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

"SEC. 13. TASK FORCE STUDY.

"Seven years after the date of enactment of the Export Trade Association Act of 1979, the President shall appoint, by and with the advice and consent of the Senate, a task force to examine the effect of the operation of this Act on domestic competition and on the United States' international trade deficit and to recommend either continuation, revision, or termination of the Webb-Pomerene Act. The task force shall have one year to conduct its study and to make its recommendations to the President.".

(b) REDESIGNATION OF SECTION 6.—The Act is amended—

(1) by striking out "Sec. 6." in section 6 (15 U.S.C. 66), and

(2) by inserting immediately before such section the following:

"SEC. 14. SHORT TITLE.".

SECTION-BY-SECTION EXPLANATION

Section 1. Short Title: Export Trade Association Act of 1979.

Section 2. Findings and Declaration of Purposes:

Section 2 sets forth the findings and declaration of purposes.

Section 3. Definitions:

Section 3 defines the pertinent terms. The definition of "export trade" is expanded from the definition contained in the Webb-Pomerene Act (15 U.S.C. 61-65) to include services. The term "service" means intangible economic output, including, but not limited to business, repair, and amusement services; management, legal, engineering, architectural, and other professional services; and financial, insurance, transportation, and communication services. The term "export trade activities" includes any activities or agreements which are incidental to export trade. The term "association" refers to any combination of persons, partnerships, or corporations, all of which must be citizens of the United States or created under the laws of any State or of the United States. A foreign controlled subsidiary created under the laws of any State or of the United States, however, cannot be a member of the "association." The term "antitrust laws" means all antitrust laws of any State or of the United States.

Section 4. Exemption from Antitrust Law:

Section 4 provides that an export trade association certified according to the procedures set forth in this Act is exempt from the application of the antitrust laws provided that the association and its export trade activities (1) serve to preserve or promote export trade; (2) neither result in a substantial restraint of competition within the United States nor constitute a substantial restraint of the export trade of any domestic competitor of the association; (3) do not unreasonably enhance, stabilize, or depress prices within the United States; (4) do not constitute unfair methods of competition against domestic competitors; (5) are not reasonably expected to result in the consumption or resale in the United States of goods or services exported by the association; and, (6) do not constitute trade or commerce in the licensing of patents, technology, trademarks, or know-how, except as incidental to the sale of goods or services exported by the association or its members. Section 4 establishes that federal agencies shall have standing to bring an action against an association for failure to meet the requirements set forth above. Section 4 makes provisions for persons to petition a federal agency to bring an action against an association. It also describes the remedies available to the federal agency and creates jurisdiction in the federal courts for an action brought under this section.

Section 5. Redesignation and Amendment of Sections 3 and 4:

Section 5 provides for conforming changes to Sections 3 and 4 of the Webb-Pomerene Act. Section 3 of the Webb-Pomerene Act is redesignated as Section 5 and is amended to prohibit an association from engaging in unfair methods of competition against domestic competitors only.

Section 6. Administration; Enforcement; Reports:

This section strikes Section 5 from the Webb-Pomerene Act and inserts in lieu thereof a new Section 5 and eight new sections.

A new Section 5 establishes the procedure for applying for certification as an export trade association. It describes the information to be included in the application for certification, most notable of which are an explanation of the conditions, circumstances, and factors which make an association useful for the purpose of promoting export trade; a description of the methods by which the association conducts its export trade; and any other information which is reasonably available to the applying parties and which is necessary for the certification of the prospective association. The new section requires that the Secretary certify an association within 90 days after receiving the association's application if the Secretary determines that the association, it members, and proposed export trade activities meet the requirements listed in the new Section 3. The section provides for an expedited certification process. An amendment procedure is another feature of this section. If there transpires a material change in circumstances which would cause an association to fail to meet any requirement of the new Section 3 of the Webb-Pomerene Act, the association must apply to the Secretary for an amendment of its certification within 30 days of the date of the material change. If the association fails to apply for an amendment within the thirty-day time period, its certification will be void as of the date of the material change. The Secretary, after notifying the association, may (1) require that an association's certification be amended, (2) require that the organization or operation of the association be modified to correspond with the association's certification, or (3) revoke, in whole or in part, the certification of the association upon a finding that the association or its members or its export trade activities do not meet the requirements of the new Section 3.

A new Section 6 to the Webb-Pomerene Act requires that the Secretary, the Attorney General, and the Chairman establish guidelines for purposes of determining whether an association, its members and export trade activities meet the requirements of the new Section 3.

A new Section 7 to the Webb-Pomerene Act stipulates that every certified association shall submit to the Secretary an annual report setting forth the information required in the application for certification.

A new Section 8 to the Webb-Pomerene Act establishes within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations through the use of provisions of this Act.

A new Section 9 to the Webb-Pomerene Act provides for automatic certification for existing export trade associations registered under current law. In order to obtain automatic certification, an existing export trade association must file an application for certification within 180 days after the date of enactment of this Act.

A new Section 10 to the Webb-Pomerene Act provides for the confidentiality of the information contained in an association's application for certification, application for amendment of certification, and annual report.

A new Section 11 to the Webb-Pomerene Act authorizes the Secretary of the Treasury to require an association to modify its operations so as to be consistent with future international obligations of the United States set by treaty or statute.

A new Section 12 to the Webb-Pomerene Act authorizes the Secretary, in consultation with the Attorney General and the Chairman, to promulgate such rules and regulations as are necessary to carry out the purposes of this Act.

A new Section 13 to the Webb-Pomerene Act requires the President seven years after the date of enactment of this Act to appoint a task force to examine the effect of the operation of this Act on domestic competition and on the United States' international trade deficit and to recommend either continuation, revision, or termination of the Webb-Pomerene Act.

Section 6 of the Webb-Pomerene Act is redesignated as "Section 14. Short Title.".

Mr. JAVITS. Mr. President, today I am pleased to join my colleague, Senator DANFORTH, in introducing legislation to establish within the Department of Commerce an office to promote and encourage the formation and utilization of export trade associations.

As we contemplate a potential trade shortfall of $40 billion in 1979, we can no longer afford to ignore the weak economic performance of the United States in international markets. The unprecedented balance of trade deficits in the last 2 years have resulted in the steady erosion of confidence in the dollar and aggravated inflationary pressures at home. Additional setbacks perpetuated by chronic deficits include loss of jobs—exports currently account for one of every nine manufacturing jobs in the United States—and declining competitiveness of U.S. manufactured products in overseas markets.

The long-term trends in U.S. export performance are not encouraging. According to a recent study released by the Subcommittee on International Finance of the Committee on Banking, Housing, and Urban Affairs, not only has U.S. export growth been slowing—in real terms U.S. exports in 1977 were only 1 percent greater than in 1974—but what growth has occurred has been due entirely to price increases rather than greater sales volume. While the softening in U.S. export growth can be attributed in part to the slow growth rates in the economies

of the United States' traditional trading partners, the failure of U.S. industries to expand exports in faster growing economies at the same paceas competitors, has resulted in a steadily shrinking market share for U.S. products overseas.

Mr. President, I cannot emphasize enough the urgency of developing a coordinated and aggressive national export policy. The management of our domestic economy and the export sector are inextricably interwoven. Each $1 billion of exports foregone represents a loss of $2 billion in GNP and $400 million in Federal tax revenues. Conversely, each $1 billion of U.S. goods sold overseas generates 40,000 U.S. jobs. Export promotion must become a high priority initiative of U.S. Government policy.

The President, in his export policy statement of September 26, 1978, urged that the laws and policies affecting the international business community be administered firmly and fairly, but with a "greater sensitivity to the importance of exports than has been the case in the past." Unfortunately, for whatever reason, this expression of intent has yet to evolve into a substantive program geared to stimulating the business community to action.

A large domestic economy and favorable growth rates at home have traditionally enabled U.S. businessmen to concentrate on expanding production to supply domestic consumption rather than to embark on aggressive searches for new markets overseas. Not only have U.S. producers had fewer incentives to export, they have had to deal with a host of legal and bureaucratic impediments—of which the uncertain application of U.S. antitrust laws is just one example. Decisionmakers in private industry increasingly forego daring and innovative penetrations of new markets, especially overseas, because of an uncertain business climate or at least one which they perceive to be uncertain. We must begin to foster, through greater Government-private industry cooperation, a more favorable climate in which U.S. companies, both large and small, can expand their economic horizons through greater export sales.

One of the major criticisms directed against modifying our laws to allow for the additional formation of export trade associations is that they are presently little used. However, although export trade associations number approximately 25 and currently account for less than 2 percent of U.S. exports, the Department of Commerce considers these associations to be underutilized because the present legislation does not explicitly cover the export of services or other intangibles. We live in an increasingly service-oriented society, and service related industries account for just under two-thirds of U.S. GNP, yet exports of services totalled less than $7 billion in 1974. Surely, the potential for increasing exports in this sector of the economy is just waiting to be tapped?

Critics of export trade associations further argue that these associations act as an "unwarranted spur to international cartel arrangements." I believe these critics miss the main point. Support of these associations should not be construed as an endorsement of international cartels; in my experience, export trade associations have been used defensively rather than offensively to provide individual U.S. corporations with the legal protection better to compete in third markets with foreign competitors; whether these be large nationalized industries or foreign export cartels. These export trade associations serve a useful purpose to many exporters, and if the Federal Government undertook to educate business owners, particularly small business owners, on the benefits of forming associations, I feel it could play an even more important role in our efforts to increase exports.

Last year, I had the honor to serve for 6 months as a member of the National Commission for the Review of Antitrust Laws and Procedures. Regrettably, while our report did not address all aspects of U.S. antitrust laws as they apply to the practices of U.S. businessmen engaged in international commerce, it did focus on the Webb-Pomerene exemption. Among other suggestions, the commission, together with the Business Advisory Panel which had been appointed to work with the commission at the recommendation of the President's Export Policy Task Force, recommended that if, upon reexamination of the act, Congress agreed to retain the exemption for export associations, then it should be expanded to include service industries. I support strongly, as I did in my separate views to the commission's report, this expansion of the act's coverage and I think that it furthers our objective of promoting U.S. exports.

The bill which I cosponsor today, by establishing an office within the Department of Commerce to encourage the formation of export trade associations, by expanding the provisions of the Webb-Pomerene Act to include the exportation of services, and by transferring the administration of the act from the chairman of the Federal Trade Commission to the Secretary of Commerce, is designed to lay the groundwork for this new export policy approach.

● Mr. BENTSEN. Mr. President, prompt enactment of the "Export Trade Association Act" which Senator DANFORTH and I are introducing today would be an important step toward helping to reduce our staggering trade deficit. This legislation would encourage American firms, including smaller- and medium-sized businesses, to participate in export activities on a joint basis, enabling them to benefit from economies of scale and sharing of market information. This legislation should provide a considerable impetus to U.S. exports and help make us more competitive in world markets.

With a trade deficit in excess of $30 billion last year, Congress must act promptly to formulate a comprehensive export promotion policy. Our enormous trade deficit contributes to inflation, destroys the value of our currency and creates doubt about our free market system. Fundamental improvement in our trade position is critical to a healthy American economy.

The following statistics dramatize the seriousness of the problem. Prior to 1976, the largest U.S. trade deficit for a full year was the $6.4 billion deficit in 1972. In comparison, the trade deficits in 1976, 1977, and 1978 were $9 billion, $31 billion and an estimated $35 billion, respectively. The U.S. share of total manufactured exports of 15 industrial countries fell from almost 30 percent in the late 1950's to 19.2 percent in 1972. It rose to 21.1 percent in 1975 but has declined steadily since then, falling to 18.9 percent by the first quarter of 1978, the lowest since mid-1972.

In 1918 the Webb-Pomerene Act (15 U.S.C. 61–65) was enacted to exempt joint export ventures from the antitrust laws, provided these activities did not restrain trade within the United States. The purpose of the act was to encourage American maufacturers and producers to compete in foreign trade. However, the vagueness of the law and subsequent judicial decisions have discouraged the use of this export promotion vehicle. The legislation being introduced today would help restore the original intent of the Webb-Pomerene Act.

Japan recognized the importance of encouraging exports by smaller firms over 20 years ago. In 1958 the Japan External Trade Organization (JETRO) was enacted to assist small- and medium-sized firms "to make them more export minded." The rationale behind the Japanese Government's focus on the small- and medium-sized companies was that the large companies in general were motivated to export and, in addition, had marketing capabilities. The United States would not be facing such a large trade deficit today if we had been conscious of export policy during the past 20 years.

Under our legislation, "export trade associations" which have been certified by the Secretary of Commerce would be exempt from the antitrust laws. The Secretary of Commerce would be directed to make a decision within 90 days after receiving an exemption application. Certification would be granted to trade associations which would not substantially reduce domestic competition. In addition, the Department of Commerce would be directed to establish a separate office to encourage and promote the formation of export trade associations.

Mr. President, I believe this legislation constitutes an essential ingredient in a broad national effort to reduce our staggering trade deficit. Senator DANFORTH and I have already been successful in securing Senate Finance Committee approval of many of our proposals to strengthen the countervailing duty laws, and we are formulating some important tax provisions to help maintain the U.S. competitive position in the international marketplace.

If the United States of America is to deal effectively with its emerging international trade crisis, we must act promptly to provide timely and effective remedies against unfair trade practices and take appropriate action to encourage, wherever possible, American exports.●

bill I am presenting today will complete the job started in the last session.

My bill is broader in scope than previously introduced measures: it applies not just to farmers or to insurance salesmen, but to all persons who are similarly situated. The strict requirements of my bill allow the exclusion to be claimed only under the following conditions: First, at least 50 percent of the individual's self-employment earnings for the year would have to be of the type attributable to prior-year services. Second, the individual would have to be willing to accept a complete loss of benefits for any month of the year in which he does, in fact, engage in substanital work activity. Lastly, the annual benefits total would have to be increased even after one or more months of benefits are lost, because of substantial work activity. These safeguards will insure that abuse does not occur as it did prior to the amendments.

My bill seeks to treat retired persons who were self-employed in an equitable manner, consistent with the goals and policy of the social security program. It should be noted that the Senate did, in fact, approve an earlier version of this legislation. For the reasons stated and to meet the urgent need of those affected by the present restrictions, I urge quick Senate action on this measure.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1498

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 203(f)(5) of the Social Security Act is amended—

(1) in subparagraph (B)(i), by striking out "shall be determined" and inserting in lieu thereof "shall (subject to subparagraph (E)) be determined", and

(2) by adding after subparagraph (D) the following new subparagraph:

"(E)(i) If, of the total of an individual's net earnings from self-employment for any taxable year, an amount equal to at least 50 per centum thereof is substantially attributable to such individual's engagement in self-employment for a period prior to such year, such amount shall be excluded in determining, for purposes of this subsection, the total of such individual's net earnings from self-employment for such year.

"(ii) If, during any month of a taxable year with respect to which an amount is excluded pursuant to clause (i) from an individual's net earnings from self-employment, such individual—

"(I) renders substantial services with respect to a trade or business the net income or loss of which is includible in computing (as provided in paragraph (5) of this subsection, but without regard to this subparagraph) his net earnings or net loss from self-employment for such taxable year, or

"(II) renders services for wages (determined as provided in the preceding provisions of this paragraph) of more than the applicable exempt amount as determined under paragraph (8),

such individual shall, for purposes of subsection (c) be deemed to be charged with excess earnings for such month—

"(III) in case such individual is entitled to benefits for such month under a provision of section 202 other than subsection (a) thereof, equal to such individual's benefit or benefits under such section for such month, or

"(IV) in case such individual is entitled to old-age insurance benefits under section 202(a) for such month, equal to such individual's old-age insurance benefit for such month plus the monthly benefits for such month of all other persons under section 202 based on such individual's wages and self-employment income.

Amounts of excess earnings for which an individual is deemed to be charged for any month under this clause shall not operate to reduce the total of the excess earnings for which he is chargeable under this section as determined without regard to this subparagraph.

"(iii) The provisions of this subparagraph shall not be applicable, in the case of any individual for any taxable year, if the application of such provisions would result in the aggregate of the deductions under subsection (c), on account of excess earnings with which such individual is charged or deemed to be charged, being greater than would have been the case without the application of such provisions.".

(b) The amendments made by subsection (a) shall be applicable, in the case of any individual, only in the case of taxable years of such individual which begin after the date of enactment of this Act.●

By Mr. ROTH:

S. 1499. A bill to promote and encourage the formation and utilization of export trade associations, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

EXPORT TRADE ACTIVITIES ACT

● Mr. ROTH. Mr. President, I am introducing the Export Trade Activities Act which replaces the Webb-Pomerene Act. This bill increases the effectiveness of export trade associations while adequately protecting nonassociation members. This bill is only one of many steps I believe necessary to restore the U.S. competitiveness in the world markets.

The U.S. share of world markets has dropped from 18 percent in the early 1960's to less than 12 percent today. Our export of manufactured goods has been declining in recent years. Between 1975 and 1978, the U.S. trade account in manufactured goods dropped from about a $20 billion surplus to a $5.8 billion deficit. The massive trade deficits of the past few years have caused unemployment, have increased inflationary pressures and have contributed to the erosion of the dollar.

The Webb-Pomerene Act was enacted in 1918 to allow producers of goods to join together to export without fear of antitrust or anticompetitive action provided the association's actions do not adversely affect its domestic trade. It was the intent of Congress that American exporters could combine to meet the aggressive competition of powerful foreign competitors.

There was a need for the Webb-Pomerene Act in 1918, and today there is a need to improve and update it. Government sponsored or controlled exporting activities of other countries are still prevalent. Webb-Pomerene associations have never been as effective as hoped. Although they were more widely used at one time, today they account for less than 2 percent of the total U.S. exports. Given our trade problems, we must try to increase the effectiveness of our trading vehicles.

Export trade associations should be more effective under this bill because of three significant changes. First, the bill includes the exporting of services under the antitrust exemption. Second, the Department of Justice's ability to bring an antitrust action has been curtailed. This will assuage the reluctance of producers to join together to export. Third, an individual injured by an association's unlawful activities is limited to suing for compensatory damages only.

The Export Trade Activities Act would increase the effectiveness of our export trade associations. We must encourage the exportation of our services and goods.

Mr. President, I am under no delusion that the Export Trade Activities Act is the elixir to our trade problems. However, it should enable our producers to more ably compete with their foreign competitors for world markets.

Mr. President, I ask unanimous consent that the text of the bill and section-by-section explanation of the bill be printed in the RECORD.

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 1499

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Export Trade Activities Act".

SEC. 2. FINDINGS; DECLARATION OF PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) exports account for one out of every six jobs in the manufacturing sector and 8 percent of the gross national product of the United States;

(2) every billion dollars in new exports is estimated to provide 40,000 jobs, $2,000,000,000 in national income, and $400,000,000 in government revenue;

(3) there is increasingly fierce competition to American goods and services in international markets;

(4) the ability to pool resources and expertise would help equalize the bargaining position of American businesses in international transactions, particularly of small- and medium-sized businesses; and

(5) the existing legislation involving export trade associations is outdated and needs to be changed to make export trade associations more useful.

(b) PURPOSE.—It is the purpose of this Act encourage and promote the formation of export trade associations, and to enable businesses to share the costs of export trade. The Federal Trade Commission shall consider and process applications submitted under section 6 as expeditiously as possible. The Secretary of Commerce shall take appropriate measures to encourage the establishment and use of such associations.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) EXPORT TRADE.—The term "export trade" means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States to any foreign nation, but does not include—

(A) trade or commerce in any such goods, products, or merchandise subsequently imported into the United States for sale for consumption or resale, without regard to whether they are imported in the same con-

dition as when they were exported from the United States or in a changed condition by reason of remanufacture or otherwise, or

(2) trade or commerce in patents, licenses, trade secrets, or technology (except to the extent that technology is incidental to the sale of such goods, products, merchandise, or services).

(2) EXPORT TRADE ACTIVITIES.—The term "export trade activities" includes any activities or agreements which are incidental to export trade.

(3) UNITED STATES.—The term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(4) ASSOCIATION.—The term "association" means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations which are created under and exist pursuant to the laws of any State or of the United States.

(5) ANTITRUST LAWS.—The term "antitrust laws" means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12) and section 4 of the Federal Trade Commission Act (15 U.S.C. 44), any other law of the United States in *pari materia* with those laws, and any State antitrust or unfair competition law.

(6) COMMISSION.—The term "Commission" means Federal Trade Commission.

(7) CHAIRMAN.—The term "Chairman" means the Chairman of the Federal Trade Commission.

(8) ATTORNEY GENERAL.—The term "Attorney General" means the Attorney General of the United States.

SEC. 4. ANTITRUST EXEMPTION.

An association certified under section 6 of this Act, entered into for the sole purpose of engaging in export trade, and engaged in export trade activities, and its members, are exempt from the application of the antitrust laws except to the extent that the existence of the association, or the activities in which it and its members are engaged, result in—

(1) restraint of trade within the United States,

(2) a substantial decrease in competition within the United States, or

(3) a substantial restraint of the export trade of any domestic competitor.

SEC. 5. ENFORCEMENT.

(a) EXCLUSIVE JURISDICTION OF COMMISSION.—The Commission shall have exclusive jurisdiction to determine whether an association certified under section 6—

(1) has failed to comply with the terms and conditions of its certification, or

(2) has taken any action which is inconsistent with the requirements of section 4.

(b) DETERMINATIONS.—The Commission shall make a determination under subsection (a) after an investigation commenced after receipt of a complaint, filed with it at such time and in such manner as it may require, or upon its own motion, and after notice to the association and an opportunity for a hearing on the record.

(c) REMEDIES.—If the determination of the Commission under subsection (a) is affirmative, then it may—

(1) in the case of an affirmative determination under subsection (a)(1)—

(A) require the association to file an amended application for certification under section 6(c),

(B) require the association to modify its organization or operations,

(C) revoke, in whole or in part, the certification of the association, or

(D) refer the matter to the Attorney General for prosecution under the antitrust laws, or

(2) in the case of an affirmative determination under subsection (a)(2)—

(A) require the association to modify its organization or operations, or

(B) revoke, in whole or in part, the certification of the association.

(d) Civil Actions by Injured Parties.—

(1) STANDING REQUIREMENT.—No person shall have standing to bring an action against an association certified under section 6 for injuries arising out of the export trade activities of that association unless—

(A) the Commission has made an affirmative determination under subsection (a) with respect to the activities of the association to which the action relates, and

(B) those activities have, as a purpose or as a primary effect, a result described in section 4.

(2) LIMITATION ON DAMAGES.—Notwithstanding any other provision of law to the contrary, damages in excess of the amount necessary to compensate the injured party for losses suffered may not be awarded in any action brought against an association certified under section 6 for injuries arising out of its export trade activities.

SEC. 6. CERTIFICATION.

(a) APPLICATION.—In order to become certified as an association engaged solely in export trade, a person shall file with the Federal Trade Commission a written application for certification setting forth the following:

(1) The name of the association.

(2) The location of the association's offices or places of business in the United States and abroad.

(3) The names and addresses of the association's officers, stockholders, and members.

(4) A copy of the certificate or articles of incorporate and bylaws, if the association is a corporation; or a copy of the articles or contract of associations, if the association is unincorporated.

(5) A description of the goods, wares, merchandise, or services which the association or its members export or propose to export.

(6) The methods by which the association conducts or proposes to conduct export trade in the described goods, wares, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association.

(7) The names of all countries where export trade in the described goods, wares, merchandise, or services is conducted or proposed to be conducted by or through the association.

(8) Any other information which the Commission may request concerning the organization, operation, management, or finances of the association; the relation of the association to other associations, corporations, partnerships, and individuals; and competition or potential competition, and effects of the association thereon. The Commission may not request information under this paragraph which is not reasonably available to the person making application or which is not necessary for certification of the prospective association.

(b) ISSUANCE OF CERTIFICATE.—Based upon the information obtained from the application, the Commission shall certify an association within 90 days after receiving the association's application for certification if the Commission determines that the association and its members and the proposed export trade activities meet the requirements of section 4 of this Act. The certification may be issued subject to such terms and conditions as the Commission determines to be appropriate to ensure that the association and its activities meet the requirements for certification during the period for which the certification is in effect, and that all members of the association are treated equitably.

(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF APPLICATION.—

(1) VOIDING OF CERTIFICATION.—Whenever there is a material change in—

(A) the domestic and international conditions, circumstances, and factors which make an association useful for the purpose of promoting the export trade of its goods, wares, merchandise, or services, or

(B) the association's membership, export trade, export trade activities, or methods of operation which would cause the association to fail to meet any requirement of section 4, then the association shall apply to the Commission for an amendment of its certification.

(2) AMENDMENT OF APPLICATION.—The request for amendment shall be filed within 30 days after the date of the material change and shall set forth the requested amendment of the application and the reasons for the requested amendment. Any request for the amendment of an application shall be treated in the same manner as an original application for certification. If the request is filed within 30 days after the material change which requires the amendment, and if the requested amendment is approved, then there shall be no interruption in the period for which certification is in effect.

(3) AMENDMENT UPON RECOMMENDATION OF COMMISSION.—After notice to the association involved and the opportunity for a hearing on the record, the Commission may, on its own initiative, or upon the recommendation of the Attorney General or any other person—

(A) require that an association's certification be amended,

(B) require that the organization or operation of the association be modified to correspond with the association's certification, or

(C) revoke, in whole or in part, the certification of the association upon a finding that the association, its members, or its export trade activities do not meet the requirements of section 4 of this Act.

SEC. 7. GUIDELINES.

(a) INITIAL PROPOSED GUIDELINES.—The Commission and the Attorney General shall publish proposed guidelines for purposes of determining whether an association, its members, and its export trade activities meet the requirements of section 4 of this Act.

(b) PERIODIC REVISION.—After publication of the guidelines, the Commission and the Attorney General shall meet periodically to revise the guidelines as needed.

SEC. 8. CERTIFICATION FOR EXISTING ASSOCIATIONS.

The Commission shall certify any export trade association registered with the Federal Trade Commission as of the date of enactment of this Act if such association, within 180 days after that date, files with the Commission an application for certification as provided for in section 6 of this Act, unless such application shows on its face that the association is not eligible for certification under this Act. If the application submitted by such an association shows on its face that the association is not eligible for certification under this Act, its registration under the Webb-Pomerene Act shall cease to be effective 30 days after the date on which the Commission notifies the association of its determination of ineligibility.

SEC. 9. REVIEW OF DETERMINATION.

Whenever the Commission makes a determination under this Act with respect to an

application for certification, the amendment, modification, or revocation of a certification, or the modification of the organization or operation of an export trade association, it shall—

(1) notify the association of its determination and the reasons for its determination, and

(2) upon request made by the association, afford the association an opportunity for a hearing.

SEC. 10. ANNUAL REPORTS.

Every certified association shall submit an annual report to the Commission on January 2 of each year, in such form as it may require, setting forth the information described by section 6(a) of this Act.

SEC. 11. MODIFICATION OF ASSOCIATION TO COMPLY WITH UNITED STATES OBLIGATIONS.

At such time as the United States undertakes international obligations by treaty or statute, to the extent that the operations of any export trade association certified under this Act are inconsistent with such international obligations, the Commission or Attorney General may require such association to modify its operations so as to be consistent with such international obligations.

SEC. 12. REGULATIONS.

The Commission, in consultation with the Attorney General, shall promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

SEC. 13. REPEAL OF WEBB-POMERENE ACT.

The Webb-Pomerene Act (15 U.S.C. 61-66) is repealed as of the 90th day after the date of enactment of this Act.

SECTION-BY-SECTION EXPLANATION

Section 1. Short Title: Export Trade Activities Act.

Section 2. Findings; Declaration of Purpose.

This section sets forth the findings and declaration of purpose.

Section 3. Definitions.

This section defines the pertinent terms. The term "export trade" includes both goods and services exported from the United States, but does not include trade in goods which are subsequently imported back into the United States nor trade in patents, licenses, trade secrets or technology. The term "export trade activities" includes any activities or agreements which are incidental to export trade. The term "United States" is specifically defined. The term "association" means any combination, by contract, or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any state of the United States, or corporations which are created under and exist pursuant to the laws of any State or of the United States. The term "antitrust laws" includes all antitrust laws of any state or of the United States.

Section 4. Antitrust Exemption.

This section provides that a certified association is exempt from the application of the Antitrust laws provided that the association or its export trade activities do not result (1) in restraint of trade within the United States (2) in a substantial decrease in competition within the United States or (3) in a substantial restraint of the export trade of any domestic competitor.

Section 5. Enforcement.

This section grants to the Federal Trade Commission the exclusive jurisdiction to determine whether a certified association has failed to comply with the terms and conditions of its certification or whether its actions or agreements have been inconsistent with the requirements of Section 4. Such an investigation can be in response to a properly filed complaint or it can be initiated by the Federal Trade Commission.

If it is determined that the association has failed to comply with the terms and conditions of its certification then the Commission can:

(1) require the association to file an amended application for certification;

(2) require the association to modify its organization or operations;

(3) revoke, in whole or in part, the certification of the association; or

(4) refer the matter to the Department of Justice.

If it is determined that the association's actions have become inconsistent with the standards of Section 4 although in conformance with its registration, then the Commission can (1) require the association to modify its organization or operations or (2) revoke, in whole or in part, the certification of the association.

No person can bring an action against a certified association unless the Commission has determined that the association has failed to comply with the terms and conditions of its certification and its activities have become inconsistent with the requirements of Section 4, and in no case shall the damages be more than compensatory.

Section 6. Certification.

This section sets forth the procedure for certifying an association. It lists the required information to be filed with the FTC, most notable are the descriptions of the goods or services to be exported, the methods by which the association proposes to conduct its export trade, and any other needed information that is reasonably available.

Within ninety days after receipt of the association's application, it shall be registered subject to the terms and conditions established by the Commission as long as the proposed export activities meet the requirements of Section 4.

If there is a material change in circumstances, the association shall apply to the Commission for an amendment to its certification within thirty days of the material change. If the request for the amendment is approved, there shall be no interruption in the period of certification.

After an opportunity for a hearing on the record for the association, the FTC may require that the association's certification be amended, order that the organization or operation of the association be modified to correspond with the association's certification, or it may revoke, in whole or in part, the certification of the association upon a finding that the association, its members or its export trade activities do not meet the requirements of Section 4.

Section 7. Guidelines.

This section requires the FTC and the Department of Justice to publish proposed guidelines for the purposes of determining whether an association, its members, and its export trade activities, meet the requirements of Section 4. These guidelines shall be periodically revised.

Section 8. Certification For Existing Associations.

This section allows an existing association 180 days after the enactment of this bill to file with the Commission to continue its immunity from the antitrust laws. The association shall be registered unless the application shows on its face that the association is not eligible for certification, in which case 30 days after the association becomes aware of the FTC's decision any immunity for future conduct shall cease.

Section 9. Review of Determinations.

This section provides that whenever the Commission makes a determination under this Act affecting the certification of the association, it shall notify the association of its determination and the reasons for its determination and afford the association an opportunity for a hearing.

Section 10. Annual Reports.

This section requires the certified association shall submit an annual report to the Commission on January 2 setting forth the information listed in Section 6.

Section 11. Modification of Association to Comply With The United States Obligations.

This section authorizes the FTC and the Department of Justice to modify its operation so as to be consistent with future international obligations of the United States, set by treaty or statute.

Section 12. Regulations.

The Commission in consultation with the Attorney General shall promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

Section 13. Repeal of Webb-Pomerene Act.

This section repeals the Webb-Pomerene Act 90 days after the enactment of this Act.

By Mr. BENTSEN:

S. 1500. A bill to amend the Federal Rules of Criminal Procedure to provide certain sentencing requirements in any case in which a person commits a felony while admitted to bail; to the Committee on the Judiciary.

S. 1501. A bill to prohibit the pretrial release of any person charged with an act of aggravated terrorism; to the Committee on the Judiciary.

BAIL REFORM LEGISLATION

● Mr. BENTSEN. Mr. President, in the wake of recent crime statistics showing a 17-percent increase in violent crime, it is appropriate to take a few moments to consider what I believe is the new realism in crime control, and how that new realism can enable our Nation to respond to this important problem.

Today I will introduce legislation to reform Federal bail laws, and call on the Senate Judiciary Committee to consider major reforms and to hold hearings that can help focus a national debate and analysis of this difficult and complex topic. I believe we can reform our criminal law in a manner that can increase the odds that society will be protected from dangerous criminals, and we can make the administration of justice more fair and effective.

The problem of bail is just one of a number of serious issues that must be faced if we are to move closer toward a just and safe society. The criminal justice system is overworked and understaffed. Courts are clogged, prosecutors strapped, prisons jammed, and the criminals know it. Indeterminate sentencing often provides neither certainty nor fairness of punishment. Career criminals careen through revolving doors and emerge on the streets where they continue their violent habits. Inadequate and sometimes brutal prisons serve neither society nor justice nor the offender. Bail laws often allow some of the most dangerous criminals to commit additional crimes as they await trial for previous offenses.

Today I introduce legislation that will bring the new realism on crime control to bail reform. These are modest proposals that can begin a movement toward wider reform.

The first bill would provide increased punishment for persons convicted of felonies committed while they were on bail for previous crimes. The second will allow judges to detain offenders accused of terrorist violence where such persons pose a serious danger to community safety. I call on the Judiciary Committee to conduct hearings on the general sta-

and subject to the same conditions as if such individuals had adopted the child.

"(b) For purposes of this Act, the term 'aid to families with dependent children' shall, notwithstanding section 403(b), include payments made under and in accordance with this section.

"(c) In order to determine that a child is a child with special needs for purposes of this section, the State or local agency administering the program under this part must determine (in accordance with such standards and procedures as the Secretary may by regulation provide)—

"(1) that the child cannot or should not be returned to his biological family;

"(2) that the child is difficult or impossible to place with appropriate adoptive parents without providing adoption assistance payments because of his ethnic background, age, membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps; and

"(3) that, except where it would be against the best interests of the child because of such factors as the development of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable effort, consistent with the best interest of the child, has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section.

"(d) For purposes of this section—

"(1) the term 'adoption assistance agreement' means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which, at a minimum, specifies the amounts of the adoption assistance payments (if any) and any additional services and assistance which are to be provided as part of such agreement, and stipulates that the agreement shall remain in effect regardless of whether the adoptive parents are or remain residents of the State; and

"(2) the term 'parent' means a biological or adoptive parent or legal guardian, as determined by applicable State law.".

(b) Section 402(a)(24) of such Act is amended by inserting before the semicolon the following: "(but nothing in this paragraph shall affect the eligibility of any such individual or his adoptive parents for assistance under section 412)".

(c) The amendments made by this Act shall become effective in any State on the first day of such month during the period beginning October 1, 1979, and ending September 30, 1980, as the State may designate, but shall in any event be effective in all States no later than September 1, 1980.●

By Mr. CHILES (for himself, Mr. MELCHER, and Mr. PRYOR):

S. 1662. A bill to amend title XI of the Social Security Act to authorize civil monetary penalties for certain fraudulent activities in the medicare and medicaid programs, and for other purposes; to the Committee on Finance.

MEDICARE AND MEDICAID FRAUD AND ABUSE AMENDMENTS OF 1979

● Mr. CHILES. Mr. President, I am introducing a bill today, at the request of the administration, to provide the HEW Secretary with authority to impose civil money penalties on medicare and medicaid providers who have abused these programs by submitting false claims. The bill is identical to H.R. 4106, introduced in the House by Representatives WAXMAN, RANGEL, ECKHARDT, and GIBBONS.

HEW has estimated that the enactment of this bill will result in savings of about $9 million in medicare overpayments and $14 million in medicaid in the first year of operation.

Title I of the bill would give the HEW Secretary authority to impose a civil money penalty of up to $2,000 for a fraudulent claim. In addition, the Secretary could impose a fine for damages up to twice the amount of the fraudulent portion of the claim. Any provider determined to have filed a fraudulent claim could be denied participation in medicare and medicaid for up to 2 years.

The bill provides for protections of a written notice, a formal factfinding hearing with representation by counsel, and judicial review on appeal of an adverse determination.

Currently, the HEW Secretary has little authority to move directly against cases of medicare and medicaid fraud and abuse. Lengthy and costly criminal court proceedings, through the Justice Department, are often the only recourse.

I have been concerned about the slow progress made to date to bar unethical health care providers from participation in medicare and medicaid. Cases of outright falsification of home health claims and other program abuses exposed in hearings before the Senate Committee on Aging and the Subcommittee on Federal Spending Practices and Open Government as long as 4 years ago have still not been resolved. This is the case even though Congress took unprecedented action in 1977 to create an Office of Inspector General within the Department of Health, Education, and Welfare.

This bill would provide the Secretary with the ability to move decisively in cases in which criminal prosecution may not be warranted or feasible. I believe we need to make it clear, however, that the civil money penalty authority proposed by this bill should not be viewed as a substitute for the existing process of criminal court proceedings. The Justice Department and the court system should become more involved in medicare and medicaid fraud cases, not less.

Title II of the bill would make a number of amendments to improve and make more flexible existing authority to control fraud and abuse.

The bill would permit annual, rather than quarterly, calculation of limitations on payments for State medicaid fraud control units, for which Federal matching funds are authorized under Public Law 95-142.

The Secretary of HEW would be given additional authority to bar a health care provider from participation in medicare and medicaid once convicted of a medicare or medicaid-related crime.

Present requirements for reporting of financial interests as a medicare condition of participation would be amended to require an entity to report only those individual interests in mortgages or other obligations equal to at least $25,000 or 5 percent of the provider's total assets.

The bill would also authorize the Secretary to recover medicare overpayments from providers no longer participating in medicare by withholding medicaid payments.●

By Mr. STEVENSON:

S. 1663. A bill to encourage exports by providing for the licensing of export trading companies by the Secretary of Commerce, and by otherwise facilitating their formation and operation; to the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance, jointly, by unanimous consent.

EXPORT TRADING COMPANY ACT OF 1979

● Mr. STEVENSON. Mr. President, the United States has approved the multilateral trade agreements which, when implemented, will open new trade opportunities around the world. This chance to expand U.S. exports comes at an opportune time. Exports are needed to pay the oil import bill, which will continue to grow even if volume can be restrained, and to stimulate U.S. business investment during the impending recession.

But June brought the 37th consecutive monthly U.S. trade deficit. Exports are not growing fast enough. The reasons are many: U.S. Government disincentives to exports, subsidized foreign competition, an unstable dollar; and business reluctance to bear the costs and risks of international trade.

The Department of Commeree estimates there are 20,000 U.S. firms which could export profitably but do not. Most are smaller companies located outside the major metropolises of America. The United States market has served these companies well, but they could do better by exporting. They must learn to compete abroad or they will find they are unable to meet foreign competition here at home.

Many companies do not export because they do not have the funds to invest in market development abroad nor the time or personnel to master customs documents, shipping, packaging, marketing, and the myriad of details involved in exporting. Such companies need more than a Commerce Department brochure or a day-long seminar in Dubuque. They need someone to market their products for them; a way to spread among many firms the risks and costs they cannot afford on an individual basis.

Trading companies may be the only way to expand export participation by smaller U.S. companies. Trading companies could give U.S. manufacturers access to experienced traders who can handle all the servicing and selling of export sales and have the expertise to develop markets abroad.

Trading companies can pool talent and resources to do market analysis and marketing on behalf of thousands of U.S. manufacturers. Trading companies have been responsible for much of the success of Japan and Korea in selling their products around the world. More than one-half of Japanese exports are handled by trading companies. Trading companies offer manufacturers an inexpensive way to export to distant lands. Commissions charged by Japanese trading companies ordinarily range from 0.5 percent to 5 percent.

The bill I introduce today will facilitate the formation of U.S. export trading companies. The United States has no trading companies at present. There are small export management companies in

the United States, but the difficulty in securing adequate financing to expand such low profit margin enterprises prevents export management companies from reaching more than a minute fraction of the U.S. companies which could export. Even the largest Japanese trading companies typically realize profits on total volume of no more than 2 percent—but their total volume per year is more than $200 billion.

To be successful, export trading companies must have a diversified set of products to sell and must sell them in geographically dispersed markets. A trading company must be able to provide all export services, including financing, transportation, warehousing, packaging, and marketing. A foreign sales network including offices abroad is essential.

The principal purpose of the legislation is to encourage U.S. exports, but it is important for the financial success of trading companies that they be able to engage in import trade and trade between foreign countries as well. Otherwise, the trading company would be unable to achieve sufficient trade volume and absorb foreign exchange fluctuations. Foreign countries would resent a U.S. company which existed only to sell U.S. exports when those countries are desperately trying to encourage their own exports.

The United States has a good opportunity over the next few years to expand exports. The price competitiveness of U.S. goods is better now than it has been for several years. There is strong foreign interest in United States consumer goods, both low and high technology. U.S. trading companies could develop markets for a wide range of U.S. goods, as Japanese trading companies have done for Japanese products. For example, the giant Nissho-Iwai general trading company does no manufacturing but does practically everything else, from market studies to buying, selling, shipping insuring, and financing sales. Nissho-Iwai has 160 offices in 72 countries with 8,000 employees, and handles 10,000 different products.

U.S. export trading companies on the Japanese model could provide the means for thousands of U.S. firms to market their products abroad. Without the kind of export servicing which trading companies can provide, most U.S. companies will continue to rely solely on the U.S. market. They will thereby forgo not only sales but the competitive experience of trying to penetrate foreign markets. All too often they will find that their lack of competitive experience in the world marketplace will serve them poorly when they face foreign competition in this country.

The bill I introduce today would encourage prompt formation of U.S. export trading companies by: First, providing loans and guarantees to help meet start-up costs; second, permitting initial formation of trading companies as wholly owned subsidiaries, provided that divestiture to ownership of not more than 20 percent occurs within 10 years; third, allowing banks to participate in such companies; fourth, limiting the antitrust liability of trading companies; and fifth, providing tax treatment comparable to that accorded similar entities by other countries. The Department of Commerce would be responsible for licensing U.S export trading companies and insuring that their activities remain consistent with the purposes of the legislation.

Export trading companies formed under this legislation are expected to be publicly owned private sector companies with offices in many countries and capable of performing all aspects of trading transactions in overseas markets, including feasibility analysis, marketing, legal assistance, transportation, warehousing, foreign exchange, and financing. The major function of U.S. export, trading companies would be to market U.S. products overseas, either by buying and reselling or by providing specified marketing and related services to the producer.

A group of manufacturers needing comparable distribution channels and marketing representation could together form an export trading company with ownership by any one investor not exceeding 20 percent. To get the program in operation quickly, large companies would be encouraged to set up such companies, but under conditions requiring them to dispose of ownership in excess of 20 percent over a period of years.

Export trading companies can operate profitably if high volume and efficient operations are achieved. It is estimated that export trading companies established under the conditions set forth in this legislation could begin to make a significant positive impact on U.S. exports within 2 to 5 years, just as the multilateral trade agreements are opening new export opportunities for U.S. producers.

Mr. President, I ask unanimous consent that the bill and a section-by-section analysis thereof be printed in the RECORD.

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 1683

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Export Trading Company Act of 1979".

TITLE I—ESTABLISHMENT OF EXPORT TRADING COMPANIES

SEC. 101. DEFINITIONS.

As in this title—

(1) EXPORT TRADE.—The term "export trade" means trade or commerce in goods produced in the United States or services produced in the United States exported, or in the course of being exported, from the United States to any foreign nation.

(2) GOODS PRODUCED IN THE UNITED STATES.—The term "goods produced in the United States" means tangible property not less than 75 percent of the total value, or of the value added to a material or commodity through manufacturing or processing, of which is attributable to the United States.

(3) SERVICES PRODUCED IN THE UNITED STATES.—The term "services produced in the United States" means architectural, engineering, consulting, legal, training, financial, insurance, management, communications, and other services not less than 75 percent of the value of which is provided by United States citizens or is otherwise attributable to the United States.

(4) EXPORT TRADE ACTIVITIES.—The term "export trade activities" includes any activity which is incidental to export trade.

(5) UNITED STATES.—The term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(6) ANTITRUST LAWS.—The term "antitrust laws" means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12) and section 4 of the Federal Trade Commission Act (15 U.S.C. 44), any other law of the United States in pari materia with those laws, and any State antitrust or unfair competition law, and all amendments to the foregoing.

(7) SECRETARY.—The term "Secretary" means the Secretary of Commerce.

(8) ATTORNEY GENERAL.—The term "Attorney General" means the Attorney General of the United States.

SEC. 102. LICENSING.

(a) ELIGIBILITY.—In order to be licensed by the Secretary as an export trading company under this section, an applicant shall demonstrate, to the satisfaction of the Secretary, that it meets all requirements under this title for licensing and that it is, or will be, organized and operated principally for the purposes of—

(1) exporting goods and services produced in the United States, and

(2) facilitating the exportation of goods and services produced in the United States by providing export services such as international market research, advertising, marketing, insurance, legal assistance transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and any other export services determined by the Secretary by regulation to be consistent with the purposes of this title.

(b) APPLICATION.—In order to be licensed by the Secretary as an export trading company, a firm shall file with the Secretary a written application setting forth the following:

(1) The name of the firm.

(2) The location of the firm's offices or places of business in the United States and abroad.

(3) The names and addresses of the firm's officers, stockholders, and members.

(4) A copy of the certificate or articles of incorporation and bylaws, if the firm is a corporation; for a copy of the agreement establishing the firm, if the firm is unincorporated.

(5) A general description of the goods or services which the firm exports or proposes to export.

(6) The methods by which the firm conducts or proposes to conduct export trade in the described goods or services, including, but not limited to, any agreement to sell exclusively to or through the firm, any agreement with foreign persons who may act as joint selling agents, any agreement to acquire a foreign selling agent, and any agreement for pooling tangible or intangible property or resources.

(7) The names of all countries where export trade in the described goods or services is conducted or proposed to be conducted by or through the firm.

(8) Any other information concerning the organization, operation, management, or finances of the firm, the relation of the firm to other firms, corporations, partnerships, and individuals, and competition or potential competition the Secretary deems necessary for purposes of administering this title.

(c) OWNERSHIP REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may not issue a license to an export trading company under this section if—

(A) any partnership, association, or corporation owned or controlled by a foreign corporation or other foreign entity owns stock, or other securities with voting rights, issued by the export trading company, or

(B) any person owns, directly or indirectly, more than 20 per centum of the voting stock or interest in the export trading company.

(2) DIVESTITURE TO MEET CONTROL LIMITATION.—Notwithstanding the limitation of paragraph (1)(B), the Secretary shall not deny a license to an export trading company solely because of such limitation if—

(A) the person or persons whose ownership of stock or interest exceeds the limitation submits a divestiture plan under which he will divest himself of his stock or interest in excess of the limitation over a 10-year period beginning with the year in which the license is issued with—

(i) the first sale or transfer of stock or interest occurring not later than the fifth year of such period,

(ii) the divestiture progressing no less rapidly than ratably over the years remaining between the first year of divestiture and the last year of the 10-year period, and

(iii) divestiture completed, to the extent necessary to meet the limitation under paragraph (1)(B) by the close of such last year, and (B) such reports, no less frequently than annually, to the Secretary on the progress of the divestiture as he may require.

(d) LIMITATIONS ON ACTIVITIES OF LICENSED EXPORT TRADING COMPANIES.—The Secretary may not issue a license under this section to, and shall revoke any such license issued to, an export trading company if that company engages in manufacturing directly or through a domestic or foreign corporation which is a member of the controlled group of corporations (within the meaning of section 1563 of the Internal Revenue Code of 1954) of which the export trading company is a member. For the purposes of this subsection, the term "manufacturing" does not include packaging or limited fabrication and final assembly of products which otherwise meet the definition in section 101(2) of "goods produced in the United States." The Secretary may not decline to issue such a license, or revoke such a license, on the ground that the export trading company is engaged in activities (other than manufacturing) other than activities involving export trade to the extent that such other activities (other than manufacturing) are necessary to encourage and facilitate exports of goods and services produced in the United States.

(e) ISSUANCE OF LICENSE.—Based upon the information obtained from the application, the Secretary shall license an export trading company within 90 days after receiving the application for licensing if the Secretary determines that the firm and the proposed export trade activities meet the requirements of this title. The license may be issued subject to such terms and conditions as the Secretary determines to be appropriate to ensure that the export trading company and its activities meet the requirements for licensing during the period for which the license is in effect.

(f) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF APPLICATION.

(1) VOIDING OF LICENSE.—Whenever there is a material change in—

(A) the domestic and international conditions, circumstances, and factors which make an export trading company useful for the purpose of promoting the export trade of its goods or services, or

(B) the export trading company's export trade, export trade activities, or methods of operation which would cause the company to fail to meet any requirement of this title,

then the company shall apply to the Secretary for an amendment of its license.

(2) AMENDMENT OF APPLICATION.—The request for amendment shall be filed within 20 days after the date of the material change and shall set forth the requested amendment of the application and the reasons for the requested amendment. Any request for the amendment of an application shall be treated in the same manner as a original application for licensing. If the request is filed within 20 days after the material change which requires the amendment, and if the requested amendment is approved, then there shall be no interruption in the period for which the license is in effect.

(3) AMENDMENT UPON RECOMMENDATION OF SECRETARY.—After notice to the export trading company involved and the opportunity for a hearing on the record, the Secretary may—

(A) require that an export trading company's license be amended;

(B) require that the organization or operation of the export trading company be modified to correspond with the company's license; or

(C) revoke, in whole or in part, the license of the export trading company upon a finding that the company or its export trade activities do not meet the requirements of this title.

SEC. 105 ENFORCEMENT.

(a) EXCLUSIVE JURISDICTION OF SECRETARY.—The Secretary shall have exclusive jurisdiction to determine whether an export trading company licensed under this title—

(1) has failed to comply with the terms and conditions of its license, has engaged in activities or furnished services not described in its license application or not permitted under the license, or has knowingly violated any provision of this title, or

(2) has taken any action which is inconsistent with the requirements of this title.

(b) DETERMINATIONS.—The Secretary shall make a determination under subsection (a) after an investigation commenced after receipt of a complaint, filed with the Secretary at such time in such manner as the Secretary may require, or upon the Secretary's own motion, and after notice to the export trading company named in the complaint and an opportunity for a hearing on the record. The complaint may be filed by any person whose economic interest is, or may appear to be, adversely affected by activity to which the complaint relates.

(c) REMEDIES.—If the determination of the Secretary under subsection (a) is affirmative, then the Secretary may—

(1) in the case of an affirmative determination under subsection (a)(1)—

(A) require the company to file an amended application for license under section 102(d),

(B) require the company to modify its organization or operations,

(C) revoke, in whole or in part, the license of the company, or

(D) refer the matter to the Attorney General for prosecution under the antitrust laws, or

(2) in the case of an affirmative determination under subsection (a)(2)—

(A) bring an action in the appropriate Federal District Court to enjoin or restrain the company from engaging in any activity which constitutes or results in anything described in paragraph (1), (2), or (3) of section 106, or

(B) revoke, in whole or in part, the license of the company.

(d) STANDING REQUIREMENT.—No person shall have standing to bring an action against a company licensed under section 102 for any activity which constitutes or results in anything described in paragraph (1), (2), or (3) of section 106 other than an officer or employee of the United States acting in his official capacity.

SEC. 104. REVIEW OF DETERMINATIONS.

Whenever the Secretary makes a determination under this Act with respect to an application for a license, the amendment, modification, or revocation of a license, or the modification of the organization or operation of an export trading company, the Secretary shall—

(1) notify the company of the determination and the reasons for the determination, and

(2) upon request made by the company, afford the company an opportunity for a hearing.

SEC. 105. INITIAL INVESTMENTS AND OPERATING EXPENSES.

(a) ELIGIBILITY FOR LOANS AND GUARANTEES.—Any export trading company licensed under this title is eligible for a direct loan or financial guarantee from the Export-Import Bank of the United States, and, in the case of a small business, from the Small Business Administration, and, where otherwise eligible, from the Economic Development Administration, to meet export-related operating expenses during the first 5 years of the company's operation. Any such assistance shall be used only for expenses directly related to exports and export services, and shall not exceed 50 percent of the total operating expenses of such company in any year. In no case may the credits or guarantees to any one company exceed $10,000,000 in any single year or $25,000,000 during the 5-year period.

(b) EXPORT-IMPORT BANK LOANS AND GUARANTEES.—Subject to the limitations set forth in this title and the Export-Import Bank Act of 1945, the Export-Import Bank of the United States may provide loan guarantees to any licensed export trading company which, in the judgment of the Board of Directors of the Bank is creditworthy but is unable to obtain sufficient financing or insurance on reasonable terms from other sources.

(c) OWNERSHIP OF SECURITIES BY BANK OR BANK HOLDING COMPANY.—Notwithstanding any other provision of law, but subject to the other provisions of this title, and rules and regulations of the appropriate regulatory agencies, any bank or bank holding company chartered or incorporated within the United States and any corporation organized under section 25(a) of the Federal Reserve Act may purchase for its own account equity securities of an export trading company which is licensed under this title: Provided, However, That total investment in export trading companies by any bank or bank holding company may not exceed 10 per centum of its capital stock actually paid in and unimpaired plus 10 per centum of its unimpaired surplus fund.

SEC. 106. ANTITRUST.

(a) IN GENERAL.—An export trading company licensed under section 102 of this title is exempt from the application of the antitrust laws except to the extent that the activities in which it is engaged constitute or result in—

(1) a substantial restraint of trade within the United States or a substantial restraint of the export trade of a domestic competitor,

(2) an unfair method of competition against a domestic competitor, or

(3) an unreasonable enhancement, stabilization, or depression of prices within the United States of goods or services of the class exported by that company.

(b) INTERNATIONAL OBLIGATIONS.—Subsection (a) shall not apply to an export trading company licensed under this title to the extent that its application would be inconsistent with international obligations of the United States.

SEC. 107. REGULATIONS.

The Secretary shall promulgate such rules and regulations as may be necessary to carry out the purposes of this title. The Secretary shall consult with the Attorney General prior to promulgating rules and regulations to carry out sections 103 and 106 of this title.

TITLE II—TAX TREATMENT OF EXPORT TRADING COMPANIES AND THEIR SHAREHOLDERS

SEC. 201. ESTABLISHMENT AND TAXATION OF EXPORT TRADING COMPANIES AND THEIR SHAREHOLDERS.

(a) IN GENERAL.—Chapter 1 of the Internal Revenue Code of 1954 (relating to normal taxes and surtaxes) is amended by adding at the end thereof the following new subchapter:

"Subchapter V—Export Trading Companies

"Sec. 1388. Definition of licensed export trading company.

"Sec. 1388A. Election by licensed export trading company.

"Sec. 1388B. Rules applicable to the taxation of electing licensed export trading company shareholders.

"Sec. 1388C. Special rules applicable to an electing licensed export trading company.

"SEC. 1388. DEFINITION OF LICENSED EXPORT TRADING COMPANY.

"For purposes of this subchapter, the term 'licensed export trading company' means an export trading company licensed under section 104 of the Export Trading Company Act of 1979, the license of which is valid at all times during the taxable year of the company.

"SEC. 1388A. ELECTION BY LICENSED EXPORT TRADING COMPANY.

"(a) ELIGIBILITY.—Except as provided in section 1388C, a licensed export trading company may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter.

"(b) EFFECT.—If a licensed export trading company makes an election under subsection (a), then—

"(1) with respect to the taxable years of the export trading company for which such election is in effect, the company shall not be subject to the taxes imposed by this chapter, and, with respect to such taxable years and all succeeding taxable years, the provisions of section 1388E shall apply to that company, and

"(2) with respect to each such taxable year, the provisions of sections 1388B and 1388C shall apply to the shareholders of the company.

"(c) WHERE AND HOW MADE.—An election under subsection (a) shall be made by an export trading company at such time and in such manner as the Secretary shall prescribe by regulations.

"(d) YEARS FOR WHICH EFFECTIVE.—An election under subsection (a) shall be effective for the taxable year of the export trading company for which it is made and for all succeeding taxable years of the company, unless it is terminated under subsection (f).

"(e) TAXABLE YEAR.—The taxable year of an export trading company shall end on December 31 unless the Secretary consents to a different taxable year.

"(f) TERMINATION.—The election of an export trading company under subsection (a) shall terminate for any taxable year during which it ceases to be a licensed export trading company and for all succeeding taxable years. The election of a licensed export trading company under subsection (a) may be terminated at any other time with the consent of the Secretary, effective for the first taxable year with respect to which the Secretary consents and for all succeeding taxable years.

"SEC. 1388B. RULES APPLICABLE TO THE TAXATION OF ELECTING LICENSED EXPORT TRADING COMPANY SHAREHOLDERS.

"(a) DISTRIBUTIONS TAXED AS ORDINARY INCOME.—Any amount distributed by an electing licensed export trading company shall be treated as a distribution to which section 301(a) applies. Any amounts includable in the gross income of any shareholder by reason of ownership of stock in an electing licensed export trading company shall not be considered as a dividend for purposes of section 116.

"(b) SPECIAL RULE FOR INVESTMENT CREDIT.—The investment credit of an electing licensed export trading company for any taxable year shall be allowed as a credit to the shareholders of such company and the manner and to the extent set forth in this subsection.

"(1) CREDIT.—There shall be apportioned among the shareholders a credit equal to the amount each shareholder would have received if, on each day of such taxable year, there had been distributed pro rata to the shareholders the election licensed export trading company's net investment credit divided by the number of days in the company's taxable year.

"(2) NET INVESTMENT CREDIT.—For purposes of this subsection, the term 'net investment credit' means the investment credit of the electing licensed export trading company for its taxable year less any tax from recomputing of prior years' investment credit in accordance with section 47.

"(3) RECAPTURE.—There shall be apportioned among the shareholders of an electing licensed export trading company, in the manner described in paragraph (1), an additional tax equal to the excess of any tax resulting from recomputing of prior year's investment credit in accordance with section 47 over the investment credit of the electing licensed export trading company for its taxable year.

"(c) SPECIAL RULE FOR FOREIGN TAX CREDIT.—

"(1) IN GENERAL.—For purposes of subpart A of part III of subchapter N, a shareholder in an electing licensed export trading company who receives a distribution in any taxable year from such company shall be deemed to have paid the same proportion of any income, or profits, or excess profits taxes paid or deemed to be paid by such electing licensed export trading company to any foreign country or to any possession of the United States, on or with respect to the accumulated profits of such electing licensed export trading company from which such distributions were paid, which the amount of such distributions bears to the amount of such accumulated profits in excess of such income, war profits, and excess profits taxes (other than those deemed paid).

"(2) DEFINITION OF ACCUMULATED PROFITS; ACCOUNTING PERIODS.—For purposes of this subsection, the term 'accumulated profits' has the same meaning as in section 902(c)(1), in the rules relating to the application of the word 'year' with respect to accounting periods of less than one year (set forth in section 902(c)(2)) shall apply. For purposes of this paragraph, the provisions of section 902(c) shall be applied by substituting 'electing licensed export trading company' for 'foreign corporations' each place it appears.

"SEC. 1388C. SPECIAL RULES APPLICABLE TO AN ELECTING LICENSED EXPORT TRADING COMPANY

"The provisions of section 482 (relating to allocation of income and deductions among taxpayers) shall not apply with respect to gross income, deductions, credits, or allowances between an electing licensed export trading company and a foreign subsidiary of such a company.".

"(b) NET OPERATING LOSS DEDUCTION.—Paragraph (1) of section 172(b) of such code (relating to net operating loss carrybacks and carryovers) is amended by adding at the end thereof the following new subparagraph:

"(I) in the case of an electing licensed export trading company which has a net operating loss for any taxable year, such loss shall not be a net operating loss carryback to any taxable year preceding the year of such loss, which shall be a net operating loss carryover to each of the 10 taxable years following the year of such loss.".

(c) RETURN OF ELECTING LICENSED EXPORT TRADING COMPANY.—Subpart A of part III of subchapter A of chapter 61 (relating to information on returns) is amended by adding at the end thereof the following new section:

"SEC. 6039C. RETURN OF ELECTING LICENSED EXPORT TRADING COMPANY.

"Every electing licensed export trading company (as defined in section 1388) which makes the election provided by section 1388A shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, the amount of investment credit or additional tax, as the case may be, the names and addresses of all persons owning stock in the company at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the company during the taxable year to each shareholder, the date of each such distribution, and such other information, for the purposes of carrying out the provisions of subchapter V of chapter 1, as the Secretary may by regulation prescribe. Any return filed pursuant to this section shall, for purposes of chapter 66 (relating to limitations), be treated as a return filed by the company under section 6012. Every electing licensed export trading company shall file an annual report with the Secretary summarizing its operations for such year.".

(d) CLERICAL AMENDMENTS.—

(1) The table of subchapters for chapter 1 of such Code is amended by adding at the end thereof the following: "Subchapter V.—Export Trading Companies.".

(2) The table of sections for subpart A of part III of subchapter A of chapter 61 of such Code is amended by adding at the end thereof the following:

"Sec. 6039C. Return of electing licensed export trading company.".

SEC. 201. EFFECTIVE DATE.

The amendments made by this title shall apply with respect to export trading companies licensed after December 31, 1979.

SECTION-BY-SECTION ANALYSIS

Section 1 would provide for citation of the Act as the "Export Trading Company Act of 1979". Title I would provide for the establishment of export trading companies.

Section 101 would define terms used in

title I including: "export trade", "goods produced in the United States", "services produced in the United States", and "export trade activities".

Section 102 would provide authority for the Secretary of Commerce to license export trading companies, specify the information to be included in license applications, set forth procedures for issuing, amending, and revoking licenses, and prohibit licensing of companies in which any person owns more than a 20 percent interest (except in accordance with a plan to divest such ownership within 10 years of formation of the company). Export trading companies and their subsidiaries would be prohibited from engaging in manufacturing other than packaging and limited fabrication and final assembly of products produced principally in the United States.

Section 103 would grant the Secretary of Commerce exclusive jurisdiction to determine whether an export trading company is acting in accordance with the Act and its license, and to take remedies including court action, revocation of license, or referral to the Attorney General for prosecution. Private persons would not have standing to bring court actions to enforce the Act.

Section 104 would provide for notification to export trading companies, and opportunity for hearings, on determinations by the Secretary of Commerce to issue, amend, modify or revoke licenses.

Section 105 would establish the eligibility of export trading companies to receive loans and guarantees from the Export-Import Bank, the Small Business Administration, and the Economic Development Administration to meet up to 50 percent of export-related expenses during the initial 5 years of the company's operation, up to a maximum of $10 million in one year or $25 million in total. Export trading companies, if creditworthy, would be eligible to utilize all loan, guarantee and insurance programs of the Export-Import Bank. Private banks, bank holding companies, and Edge Act Corporations could purchase shares in export trading companies so long as total purchases did not exceed ten percent of the capital and surplus of the bank, bank holding company or Edge Corporation.

Section 106 would establish antitrust restrictions applicable to export trading companies and exempt them from other antitrust laws.

Section 107 would empower the Secretary of Commerce to issue rules and regulations to carry out Title I of the Act.

Title II would establish tax treatment for export trading companies.

Section 201 would add a new subchapter "V" to the Internal Revenue Code. Export trading companies licensed under the Act could elect the tax treatment provided by subchapter V. Distributed earnings would be treated by shareholders as ordinary income not dividends. Investment credits and foreign tax credits would flow through to shareholders. Section 482 of the Internal Revenue Code could not apply to transactions between an export trading company and its foreign subsidiaries. Net operating losses would be carried over for ten years. The form and contents of returns to be filed annually by export trading companies are specified.

Section 201 would provide for Title II to apply to export trading companies licensed after December 31, 1979.●

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill introduced today by the Senator from Illinois (Mr. STEVENSON), to encourage exports, be jointly referred to the Committees on Banking, Housing, and Urban *Affairs and Finance.*

The PRESIDING OFFICER. Without objection, it is so ordered.

By Mr. RIBICOFF (for himself, Mr. CHAFEE, Mr. DOLE, Mr. JAVITS, Mr. MOYNIHAN, Mr. PELL, *and Mr. TSONGAS)*:

S. 1664. A bill to amend the Internal Revenue Code of 1954 to provide relief to residential users of refined petroleum products; to the Committee on Finance.

HOME HEATING OIL CONSUMERS NEED RELIEF

Mr. RIBICOFF. Mr. President, I am today reintroducing legislation to provide relief for taxpayers who are facing the skyrocketing costs of home heating oil. I am very pleased that Senators CHAFEE, DOLE, JAVITS, MOYNIHAN, PELL, and TSONGAS are joining me as cosponsors of this measure.

Home heating oil consumers in Connecticut, New England, and elsewhere in the country bear a disproportionate share of the burden of the Nation's energy crisis. With no indigenous energy resources, the Northeast in particular has no choice but to depend on expensive imported oil to heat our homes. Although New England accounts for 5.8 percent of the U.S. population, it uses 20 percent of the Nation's heating oil and our energy costs are nearly 40 percent higher than in the rest of the Nation.

Seventy-one percent of all New England's buildings are heated by oil and 74 percent of the population heat with this form of energy. In Connecticut, 73.4 percent of the population—well over 2 million people—depend on oil for space heating. Over 1 million buildings in my State are heated with oil. Connecticut's consumers this winter will pay an estimated $562 million for home heating oil, $248 million more than they paid last winter. As Governor Ella Grasso has stated:

This increase is disastrous for our already overburdened consumers.

Prices could well be over a dollar before the end of the winter. This should be compared to 34 cents just 5 years ago. Therefore, a family that spent $340 dollars to keep warm in 1974 will probably spend close to a thousand dollars in the winter coming up.

New England's oil consumption is met almost totally—87 percent—by imported oil, while the United States meets less than half—47 percent—of its needs with this supply source. Since OPEC provides 77 percent of New England's total demand, prices are therefore dramatically higher than the national average.

Testimony recently presented to the Senate Finance Committee indicates that a *serious inequity exists* between the treatment of residential fuel-oil consumers and residential natural gas users. The inequity results in heating oil consumers paying substantially higher prices than natural gas consumers. A central provision of the Natural Gas Policy Act, enacted last year, requires that residential gas users not bear the burden of gas decontrol until all industrial users' natural gas prices have risen to the level of home heating oil. This effectively protects the Nation's millions of residential natural gas users from the impact of natural gas decontrol.

There is no comparable insulation or relief for consumers of heating oil, who are beginning to feel the devastating effects of the combination of oil price decontrol and sudden hikes by OPEC nations. Together, these forces are driving per gallon heating oil prices up by 35 to 40 cents over last winter's levels. It is probable these prices will climb into the high 80-cent range before January, a 75-percent increase in costs in less than a year.

The impact on the poor will be devastating, and the strain on middle income families in the range of $8,000 to $20,000 yearly income will be very substantial. For the poor, relief must come in the form of a fuel assistance direct grant program such as has been proposed by Senator JAVITS. I am a cosponsor of this measure because I feel a direct grant system will be more effective in reaching the poor than a mechanism in the tax system. The bill I am introducing today is intended to reach the income level above the poverty line into the middle income bracket.

There is no way to predict how high uncontrolled heating oil prices will rise. When the President's oil import quota program begins to bite, prices may well continue to skyrocket beyond the ability of the poor and many middle income families to pay without making painful choices among necessities. It seems certain that OPEC prices will continue to rise briskly over the next several years.

Mr. President, I do not mean to imply that this problem is exclusively one for the Northeast. It is more accurate to characterize it as a northern U.S. problem, because most States in the northern Middle West as well as the Northwest are significantly effected. In fact, 24 States make up at least 25 percent of their heating needs with fuel oil. I ask unanimous consent on a State-by-State basis, in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Means and Interstate and Foreign Commerce of the House of Representatives regarding the progress of projects undertaken in accordance with this section. The Secretary shall submit a final report with legislative and other appropriate recommendations to such committees within three years of the date of the enactment of this Act.

SEC. 204. Section 305 is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting the following after subsection (b):

"(c)(1) In carrying out section 304(a), the Secretary, acting through the Center and coordinating with other appropriate agencies, shall conduct and support research, evaluation, and demonstration projects to improve health care management. Projects conducted under this section may be coordinated with experiments and demonstration projects authorized under the Social Security Act and under section 402 of the Social Security Amendments of 1967, as amended.

"(2) Projects conducted under this section may include—

"(A) research, evaluation, and demonstration projects regarding the application of management techniques that are presently underutilized to the health care industry;

"(B) research, evaluation, and demonstration projects regarding alternative health care delivery systems to integrate health care services in the community;

"(C) research, evaluation, and demonstration projects of multi-institutional health care systems and other organizational structures, and the cost, accessibility, and quality of care provided by such systems; and

"(D) other research, evaluation, and demonstration projects that, in the judgment of the Secretary, will improve health care management.".

TITLE III—ALIEN GRADUATES OF FOREIGN MEDICAL SCHOOLS

SEC. 301. (a) Section 212(j)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by adding at the end thereof the following: ", and shall submit to the Commissioner on Immigration and Naturalization and the Secretary of Health and Human Services—

"(I) an assessment of the staffing requirements of the hospital departments in which the alien will participate or be trained; and

"(II) a staff utilization plan that provides for the optimum utilization of all available health professionals based on the service requirements of such departments.".

(b)(1) Section 212(j)(1)(D) of the Immigration and Nationality Act is amended to read as follows:

"(D) The duration of the alien's participation in the program of graduate medical education or training for which the alien is coming to the United States is limited to the lesser of seven years or the time typically required to complete such program as determined by the Director of the International Communication Agency, or the Director's delegate, at the time of the alien's entry into the United States, based on criteria established by the Secretary of Health and Human Services, however, the alien may, with the approval of the Director, or the Director's delegate, change the designated program of graduate medical education or training, but such change may not be made more than once or later than two years after the alien enters the United States as an exchange visitor or acquires exchange visitor status, provided that the commitment and written assurances under subparagraph (C) of this paragraph have been filed and approved with respect to the alien's new program.".

(2) Section 212(j)(1)(D) of the Immigration and Nationality Act, as amended by this subsection, shall be applicable to any alien entering the United States as an exchange visitor on or after January 10, 1978, or acquiring exchange visitor status on or after such date, for a program under which the alien will receive graduate medical education or training.

(c) Section 212(j)(2)(A) of the Immigration and Nationality Act is amended by striking out "December 31, 1980" and inserting in lieu thereof "December 31, 1985".

SEC. 302. (a) Section 332 of the Public Health Service Act is amended by adding the following new subsection at the end thereof:

"(i)(1) Public and private nonprofit hospitals with accredited residency training programs in which more than 25 percent of the residency positions in any such program are filled by alien graduates of foreign medical schools shall be deemed to be health manpower shortage areas.

"(2) For the purpose of assignment of Corps members under sections 333 and 752 (d), such hospitals shall be considered among facilities with the greatest health manpower shortage. Assignment of Corps members shall, whenever possible, reduce the number of alien graduates of foreign medical schools in residency positions in such facilities.".

(b)(1) Section 334(h) of the Public Health Service Act is amended by inserting the following after paragraph (3):

"(4)(A) In the case of one or more Corps members assigned to a hospital described in section 332(i), the Secretary shall waive the application of subsection (a)(3) to the extent provided in subparagraph (B). In order for the application of subsection (a)(3) to be waived, the hospital shall demonstrate to the satisfaction of the Secretary that the position available for the Corps member or members, whether in a residency training program pursuant to section 752(b)(5)(A) or as a practitioner pursuant to section 333, is attributable to the termination of one or more positions filled by an alien graduate of a foreign medical school in a residency training program within the previous 12 months.

"(B) If the Secretary determines that the hospital has demonstrated satisfactorily that the position filled by such Corps member or members is attributable to the termination of a position filled by an alien graduate of a foreign medical school as provided in subparagraph (A), the Secretary shall reduce the sum paid to the United States under subsection (a)(3) to the extent that such sum exceeds the sum paid by the hospital to such alien.".

(c)(1) Section 752(a) of the Public Health Service Act is amended by inserting "section 753(d)(2) and" after "Except as provided in".

(2) Section 752(b)(5)(A) of the Public Health Service Act is amended by adding the following before the period at the end thereof: ", except in the case of an individual who chooses to perform such individual's residency as a member of the Corps in a hospital described in section 332(i) as provided in section 752(d)(2).".

(3) Section 752(d) is amended—

(A) by inserting "(1)" after "(d)"; and

(B) by adding the following new paragraph at the end thereof:

"(2) An individual may choose to perform such individual's residency as a member of the Corps in a hospital described in section 332(i), and such residency shall be counted toward satisfying a period of obligated service under this subpart.".

SEC. 303. In order to reduce hospital dependence on alien graduates of foreign medical schools the Secretary of Health and Human Services shall—

(1) identify the States in which there are hospitals that have accredited residency training programs in which alien graduates of foreign medical schools fill more than 25 percent of the residency positions, and identify such hospitals; and

(2) develop a plan, in cooperation with the State and appropriate municipalities, with each State identified under paragraph (1), to reduce dependence on such alien graduates of foreign medical schools through the utilization of all available Federal, State, and local resources.

SEC. 304. The Secretary is authorized to enter into contracts with appropriate consultants to assist a hospital in formulating a staff utilization plan as provided in section 212(j)(1)(A) of the Immigration and Nationality Act.

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD a statement on the bill by one of its cosponsors, the Senator from Massachusetts (Mr. KENNEDY).

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY MR. KENNEDY

I am pleased to cosponsor the Health Care Management and Health Care Personnel Distribution Improvement Act of 1980, introduced by my good friend and colleague Senator Javits today. This bill compliments the Health Professions Training and Distribution Act of 1980 which I have introduced and which Senator Javits has cosponsored.

I firmly believe that we must strengthen the management capability within our health care system. The health industry is the third largest industry in the country. How we manage our resources is indeed critical in determining the costs, quality, availability, and accessibility of health services. Our success in being able to achieve cost containment relies strongly on this management capability. Therefore, it is essential for us to strengthen the programs that train our health care managers.

Senator Javits has also appropriately directed our attention to the essential role that physician graduate training plays in determining where our physicians practice, and in what specialties they concentrate their activities. We have encouraged the growth in the number of residencies in family practice, primary care internal medicine, and primary care pediatrics. We have encouraged the growth in psychiatric residency training programs. But we must also be concerned about meeting our needs in other specialties such as physical medicine and rehabilitation, and directing the attention of our residents to meeting the needs of our underserved populations.

I join Senator Javits in recognizing the difficulty that our large, municipal hospitals, which serve many of our most needy populations, have in meeting their requirements for physicians. I believe that we must support domestic programs that will solve this problem. Until these programs are in place, we would consider extension of the provision that permits waiving the 1976 requirements affecting the entry of foreign trained physicians. However, we must regard this as a temporary, time-limited extension. Although I support the thrust of Senator Javits' amendment, I have strong reservations about the extent to which National Health Service Corps scholarship recipients, as interns and residents, should be permitted to discharge their service obligation while in training programs in these hospitals.

I look forward to examining these issues with Senator Javits as the Subcommittee on Health and Scientific Research considers the extension of the health professions educational assistance legislation.

By Mr. STEVENSON (for himself, Mr. HEINZ, Mr. JAVITS, Mr. BENTSEN, and Mr. GLENN):

S. 2379. A bill to encourage exports by facilitating the formation and operation of export trading companies and the ex-

pansion of export trade services generally; to the Committee on Banking, Housing, and Urban Affairs.

EXPORT TRADING COMPANY ACT OF 1980

● Mr. STEVENSON. Mr. President, on behalf of Senators HEINZ, JAVITS, BENTSEN, GLENN and myself, I introduce a bill to facilitate the formation and operation of export trading companies and thereby expand U.S. exports. This legislation is a revised version of S. 1663 which was introduced August 2, 1979, and was the subject of hearings in the International Finance Subcommittee of the Committee on Banking, Housing, and Urban Affairs on September 17 and 18.

The new bill takes into account the many helpful suggestions received during and after the hearings. The response to the original bill and the draft revision has been gratifying, and I welcome comments on the new bill. Hearings have been scheduled for March 17 and 18 in the International Finance Subcommittee to receive additional testimony on export trading company and export trade association legislation.

The purpose of the new bill is the same as the original version: to improve U.S. export performance by encouraging the provision of export trading services to tens of thousands of American producers not presently realizing their export potential. Small and medium-sized companies and agricultural cooperatives fail to export U.S. goods and services which would be highly competitive abroad in price and quality.

They do not export because exporting involves unfamiliar risks and requires specialized knowledge and skills. Greater efforts to encourage and assist U.S. producers to export directly are desirable, but for most producers the marginal costs of developing fully their export opportunities abroad will prove prohibitive. Export success will depend upon intermediaries which, by diversifying trade risks and developing economies of scale in marketing, transportation, financing, and other export trade services, can do the exporting for U.S. producers.

A great variety of enterprises provide export trade services to U.S. producers—freight forwarders, brokers, shippers, jobbers, insurance companies, commercial banks, export management companies, advertising firms, trade lawyers, foreign purchasing agents, and others—but most fulfill only one or a few of the many functions required to engage in export trade. Export management companies usually do assume responsibility for the full range of export trade services and often take title to export goods, but export management companies tend to be small, thinly capitalized, entrepreneurial firms specialized along product lines. A few American trading companies and trade associations specializing in agricultural commodities or raw materials do exist, but do little to expand exports of U.S. manufactures.

U.S. producers have not until recently had access to general purpose trading companies. Such companies now operate in the United States, but on behalf of Japan, Korea, and Western European countries.

Foreign export trading companies no doubt contribute to the growth of U.S. exports as well as imports, but offer no long term resolution of this country's trade problems. The penetration of foreign export trading companies highlights the necessity, while demonstrating the feasibility, of U.S. export trading companies.

The free market, in theory, ought to have generated U.S. export trading companies long ago. But the market forces are imperfect due to Government regulation, the structure of American enterprise, and traditional ways of doing business. For example, Government regulations exclude U.S. banks from offering most export trading services. Federal Maritime Commission regulations prevent export traders that take title to goods from receiving commissions for freight brokerage from carriers. Antitrust uncertainties deter U.S. companies from expanding export trading activities in cooperation with other U.S. producers. American businessmen, by and large are unfamiliar with foreign customs, do not speak foreign languages, and are unaware of foreign market opportunities. The large multinational companies have developed their own export markets, but do little to assist other potential exporters. Without new legislation to reduce impediments and encourage U.S. trading companies, significant export potential will continue to go unrealized.

The bill we introduce today would facilitate formation of export trading companies and the expansion of export trade services generally. The bill defines U.S. export trading companies as firms incorporated in the United States and organized and operated principally for the purposes of: (1) exporting goods and services produced in the United States by affiliated or unaffiliated persons, and (2) facilitating the exportation of goods and services produced in the United States by unaffiliated persons by providing export services such as international market research, advertising, marketing, insurance, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, finanncing, or any other service incidental to export trade.

A firm need not provide all the export services listed to be considered an export trading company. Virtually all existing export management companies and many other companies would be treated as export trading companies for the purposes of this legislation.

Several provisions of the bill would increase the financial leverage of existing export trading companies (principally export management companies) and stimulate new entrants. The Export-Import Bank would be directed to establish a guarantee program for commercial bank, or other private, short-term loans or lines of credit secured by export accounts receivable or inventory held for exportation. Exim's guarantee could not exceed 80 percent of the commercial loan extended. The Bank's Board of Directors would be charged with evaluating the need for Exim's guarantees, the financial risk entailed, and the beneficial impact on U.S. exports. The Eximbank guarantee program would be available to United States direct exporters as well as export trading companies. Guarantees, like other Bank commitments, would be subject to limitations contained in annual appropriations bills.

Eximbank would also be authorized to make direct loans or extend loan guarantees to enable export trading companies to meet operating expenses during the first 5 years of the company's operation or during any one 5-year period in which a company formed prior to enactment of this legislation undertook major expansion of its export services to unaffiliated producers. Such loans and loan guarantees would be provided only in cases where private credit sources had declined to provide financing, and where the Bank's Board of Directors believed there was sufficient likelihood of repayment. Loans and loan guarantees to any one firm could not exceed $1 million in any single year of $2.5 million during the 5-year period, and could not exceed 50 percent of the total operating expenses of a company in any year. Total Eximbank commitments to the program could not exceed $100 million during the first 5-year period.

The bill would enable banks, bank holding companies, Edge corporations, and agreement corporations to participate directly in a broader range of export trade services by authorizing limited investments in export trading companies. Foreign banks often own trading companies (an example is Hong Kong & Shanghai Banking Corp. which owns a controlling interest in Hutchinson Whampoa Ltd., and is acquiring control of Marine Midland Bank in New York State). Enabling U.S. banks to broaden their export trade services would improve the competitive position of U.S. banks as well as boosting U.S. exports. No banking except an Edge Act corporation not engaged in banking, institution would be allowed to invest more than 10 percent of its capital in such companies in any case. Proposals to acquire controlling interests in export trading companies would be subject to review by the relevant Federal bank regulatory agency.

The bill would direct the Department of Commerce, in cooperation with other relevant agencies, to provide seminars, explanatory literature, and other assistance to parties interested in forming new export trading companies or expanding existing ones. The Department of Commerce would be directed to work with State and local governments and special authorities, such as port authorities, to facilitate the formation and operation of export trading companies, as well as the provision of export trade services generally.

The bill would clarify the eligibility of export income earned by trading companies for DISC tax deferral. Election of subpart S (passthrough of gains and losses to shareholders), would be made easier for export trading companies. The Department of Commerce, with the assistance of the Internal Revenue Serv-

ice, would be directed to prepare a guide to help export trading companies form DISC's or elect subpart S tax treatment.

The bill would make export trading companies eligible for the same treatment export trade associations are accorded under the Webb-Pomerene Act. That is, firms meeting the definition of export trading companies would, with respect to their export activities, enjoy the same status under the Webb-Pomerene Act as associations formed solely for the purpose of export trade.

The provisions of this bill would overcome the factors which have discouraged the emergence of significant U.S. export trading companies. They would do so by fostering competition in the private sector, by decreasing government regulation, and with minimal Federal Government financial participation. The growth of U.S. export trading companies can improve U.S. competitiveness over the long term, adding billions of dollars of U.S. exports which would otherwise not be produced.

Mr. President, I ask unanimous consent that the bill and a section-by-section analysis be printed in the RECORD.

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 2379

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Trading Company Act of 1980".

FINDINGS

SEC. 2. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

(2) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

(4) export trade intermediaries, such as trading companies, can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant portion of potential United States exporters);

(6) the development of export trading companies in the United States has been hampered by insular business attitudes and by government regulations; and

(7) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 3. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods produced in the United States or services produced in the United States exported, or in the course of being exported, from the United States to any foreign nation;

(2) the term "goods produced in the United States" means tangible property manufactured, produced, grown, or extracted in the United States, not more than 50 per centum of the fair market value of which is attributable to articles imported into the United States;

(3) the term "services produced in the United States" includes, but is not limited to, amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services, not less than 50 per centum of the fair market value of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, international market research, advertising, marketing, insurance, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing when provided in order to facilitate the export of goods or services produced in the United States;

(5) the term "export trading company" means a company which does business under the laws of the United States or any State and which is organized and operated principally for the purposes of—

(A) exporting goods or services produced in the United States; and

(B) facilitating the exportation of goods and services produced in the United States by unaffiliated persons by providing one or more export trade services;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(7) the term "Secretary" means the Secretary of Commerce; and

(8) the term "company" means any corporation, partnership, association, or similar organization.

(b) The Secretary is authorized, by regulation, to further define such terms consistent with this section.

FUNCTIONS OF THE SECRETARY OF COMMERCE

SEC. 4. The Secretary shall promote and encourage the formation and operation of export trading companies by providing information and advice to interested persons. The Assistant Secretary of Commerce for Trade Promotion shall be responsible for such activities and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS, HOLDING COMPANIES, AND INTERNATIONAL BANKING CORPORATIONS

SEC. 5. (a) For the purpose of this section—

(1) the term "banking organization" means any State bank, national bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(2) the term "State bank" means any bank which is incorporated under the laws of any State, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, or which is operating under the Code of Law for the District of Columbia (except a national bank);

(3) the term "State member bank" means any State bank which is a member of the Federal Reserve System;

(4) the term "State nonmember insured bank" means any State bank which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(5) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(6) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(7) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(8) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation, or Agreement Corporation; and

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank;

(9) the term "capital and surplus" means paid in and unimpaired capital and surplus, and includes undivided profits and such other items as the appropriate Federal banking agency may deem appropriate.

(10) an "affiliate" of a banking organization or export trading company is a person who controls, is controlled by, or is under common control with such banking organization or export trading company;

(11) the term "control" means the power, directly or indirectly, to vote more than 50 per centum of the voting stock or other evidences of ownership of any person, or otherwise having the power to direct or cause the direction of the management or policies of any person; and

(12) the term "export trading company" has the same meaning as in section 3(5) of this Act, or any company organized and operating principally for the purpose of providing export trade services, as defined in section 3(4) of this Act.

(b) Notwithstanding any prohibition, restriction, limitation, condition, or requirement contained in any other provision of law, any banking organization, subject to the procedures, limitations and conditions of this section, may acquire and hold for its own account, either directly or indirectly, the voting stock or other evidences of ownership of any export trading company.

(c)(1) Any banking organization may invest not more than 5 per centum of its capital and surplus in no more than 50 per centum of the voting stock or other evidences of ownership of any export trading company without obtaining the prior approval of the appropriate Federal banking agency, except that an Edge Act Corporation not engaged in banking, as defined by the Board of Governors of the Federal Reserve System, may invest up to 25 per centum of its capital and surplus in no more than 50 per centum of the voting stock or other evidences of ownership of any such company without obtaining the prior approval of the Board of Governors of the Federal Reserve System.

(2) Any banking organization may, subject to the limitations contained in subsection (e), make an investment in the voting stock or other evidence of ownership of an export trading company which does not comply with paragraph (1), if it files an application with the appropriate Federal banking

agency to make such investment and within 60 days after the receipt of such application, the appropriate Federal banking agency has not issued an order pursuant to subsection (d) denying such proposed investment. The appropriate Federal banking agency may require such information in any application filed pursuant to this subsection as is reasonably necessary to consider the factors specified in subsection (d). An application is received for the purpose of this paragraph when it has been accepted for processing by the appropriate Federal banking agency. Upon receipt of an application, the appropriate Federal banking agency shall transmit a copy thereof to the Secretary of Commerce and afford the Secretary a reasonable time, not to exceed 30 days, to present the views of the Department of Commerce on the application. An investment may be made prior to the expiration of the disapproval period if the appropriate Federal banking agency issues written notice of its intent not to disapprove the investment.

(3) Any banking organization whose proposed acquisition under paragraph (2) is disapproved by an order of the appropriate Federal banking agency under subsection (d), may obtain a review of such order in the United States Court of Appeals within any circuit wherein such organization has its principal place of business, or in the Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the disapproval was based. The court shall set aside any order found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (D) not in accordance with the procedures required by this section.

(d) The appropriate Federal banking agency may disapprove any investment for which an application is filed under subsection (c)(2) if it finds that the export-related benefits of such acquisition are clearly outweighed in the public interest by adverse competitive, financial, managerial, or other banking factors associated with the particular acquisition. In weighing the export-related benefits of a particular proposal, the appropriate Federal banking agency shall give due consideration to the views of the Department of Commerce furnished pursuant to subsection (c)(2), and shall give special weight to any application that will open new markets for United States goods and services abroad, or that will involve small- or medium-size businesses or agricultural concerns new to the export market. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(e)(1) No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances.

(2) Except as provided in subsection (c)(1), no banking organization may, in the aggregate, invest in excess of 10 per centum of its capital and surplus in the stock or other evidences of ownership of one or more export trading companies.

(f) The appropriate Federal banking agencies may adopt such rules and regulations and require such reports as are necessary to enable them to carry out the provisions of this section and prevent evasions thereof.

INITIAL INVESTMENTS AND OPERATING EXPENSES

SEC. 6. (a) The Export-Import Bank of the United States is authorized to provide loans or guarantees to export trading companies to help such companies meet operating expenses and make investments in facilities related to the export of goods or services produced in the United States, or related to the provision of export trade services, if in the judgment of the Board of Directors of the Bank—

(1) the loans or guarantees would facilitate exports which would not otherwise occur;

(2) the company is unable to obtain sufficient financing on reasonable terms from other sources; and

(3) there is reasonable assurance of repayment.

(b) Loans and guarantees under this section shall be used only for the financing of exports and export trade services. The amount of loans and guarantees to any single concern in any year may not exceed 50 per centum of such concern's annual operating expenses, as determined by the Board.

(c) The bank shall not make loans or guarantees available to any one company in excess of $1,000,000 in any 12-month period, or $2,500,000 in total. The aggregate amount of loans or guarantees outstanding at any time under this section may not exceed $100,000,000. The authority granted by this section shall expire five years after the date of enactment of this Act.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 7. The Export-Import Bank of the United States is authorized and directed to provide guarantees for up to 80 per centum of the principal of loans extended by financial institutions or other private creditors to export trading companies as defined in section 3(5) of this Act, or to exporters, for periods up to one year when in the judgment of the Board of Directors—

(1) such guarantees would facilitate expansion of exports which would not otherwise occur;

(2) the guarantees are essential to enable the export trading company or exporter to receive adequate credit to conduct normal business operations; and

(3) the guarantees are adequately secured by export accounts receivable or inventories or exportable goods. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

ELIGIBILITY OF STATE OR LOCAL GOVERNMENT-OWNED EXPORT TRADING COMPANIES

SEC. 8. Nothing in this Act preempts or otherwise restricts, prevents, or discourages any State or local government, or other governmental authority from organizing, owning, or otherwise participating in or supporting export trading companies. In carrying out the authority provided by sections 6 and 7, the Export-Import Bank of the United States shall not deny eligibility to an export trading company on the basis of ownership of such company by a State or local governmental authority.

ELIGIBILITY UNDER THE WEBB-POMERENE ACT

SEC. 9. Section 2 of the Webb-Pomerene Act (15 U.S.C. 62) is amended—

(1) by inserting after "engaged solely in such export trade," the following: "or with respect solely to its export trade activities, any corportation which is an export trading company as defined in section 3(5) of the Export Trading Company Act of 1980,"; and

(2) by inserting "or export trading company" after "association" each place, after the first, it appears.

APPLICATION OF DISC RULES TO EXPORT TRADING COMPANIES

SEC. 10. (a) Paragraph (3) of section 992 (d) of the Internal Revenue Code of 1954 (relating to ineligible corporations) is amended by inserting before the comma at the end thereof the following: "(other than a financial institution which is a banking organization defined in section 5(a) of the Export Trading Company Act of 1980 investing in the voting stock of an export trading company (as defined in section 3(5) of the Export Trading Act of 1980) in accordance with the provisions of section 5 of such Act)".

(b) Paragraph (1) of section 993(a) of the Internal Revenue Code of 1954 (relating to qualified export receipts of a DISC) is amended—

(1) by striking out "and" at the end of subparagraph (G),

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "and", and

(3) by adding at the end thereof the following new subparagraph:

"(I) in the case of a DISC which is an export trading company (as defined in section 3 (5) of the Export Trading Company Act of 1980), or which is a subsidiary of such a company, gross receipts from the export of services produced in the United States (as defined in section 3(3) of such Act) or from export trade services (as defined in section 3(4) of such Act.".

(c) The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall develop, prepare, and distribute to interested parties, including potential exporters, information concerning the manner in which an export trading company can utilize the provisions of part IV of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to domestic international sales corporations), and any advantages or disadvantages which may reasonably be expected from the election of DISC status or the establishment of a subsidiary corporation which is a DISC.

(d) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1980.

SUBCHAPTER S STATUS FOR EXPORT TRADING COMPANIES

SEC. 11. (a) Paragraph (1) of section 1371 (a) of the Internal Revenue Code of 1954 (relating to the definition of a small business corporation) is amended by inserting ", except in the case of the shareholders of an export trading company (as defined in section 3(5) of the Export Trading Company Act of 1980) if such shareholders are otherwise small business corporations for the purpose of this subchapter," after "shareholders".

(b) The first sentence of section 1372(e)(4) of such Code (relating to foreign income) is amended by inserting ", other than an export trading company," after "small business corporation".

(c) The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1980.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the legislation may be cited as the "Export Trading Company Act of 1980."

Section 2 contains the statement of findings and purpose. The findings point to the advantages export trading companies would have in assisting many U.S. producers to export. The purpose of the bill is to increase U.S. exports by encouraging more efficient provision of export trade services to U.S. producers.

Section 3 contains definitions of the following terms as used in the bill: "export trade", "goods produced in the United States," "export trade services," "export trading company," "United States," "Secretary," and "company."

Section 4 would require the Secretary of Commerce to provide information and ad-

vice to assist interested persons to form and operate export trading companies.

Section 5 would allow banks, bank holding companies, and Edge Act Corporations to invest in export trading companies, including companies providing export trade services.

Subsec. 5(a). This subsection defines the various terms used throughout the section. The term "capital and surplus" is defined generally to mean paid-in and unimpaired capital and surplus, including undivided profits. The respective banking agencies, however, are given the discretion to include such other items e.g., the proceeds of debentures or capital notes, as they deem appropriate. The term "export trading company" is defined to include an export trading company, as defined in Section 3(5) of this Act, or any company organized and operated principally for the purpose of providing "export trade services," as defined in Section 3(4) of this Act. A somewhat broader definition is employed in this Section in order to permit banking organizations to expand the types of export services they provide U.S. firms, without necessarily having to invest in a firm that engages in trading activities. A banking organization would thus be able to invest in, or even combine the operations of, many different types of firms providing export services.

Subsec. (b). This subsection overrides any provision of Federal law that would prevent a banking organization from investing in an export trading company. For example, under authority of this section, a bank holding company or Edge Act Corporation could acquire an export management firm, freight-forwarder or other firm meeting the definition of export trading company, notwithstanding any investment prohibitions contained in any provision of Title 12 of the United States Code. Any such investment would, however, be subject to the procedures, limitations and conditions of this section.

Subsec. (c). Subsection (c)(1) provides that a banking organization may invest up to five percent of its capital and surplus in no more than fifty percent of the voting stock or other evidences of ownership of an export trading company without obtaining the prior approval of the appropriate federal banking agency. This is similar to an existing procedure adopted by the Federal Reserve Board under its Regulation K for international investments by Edge and Agreement Corporation, banks, and bank holding companies (see 12 C.F.R. § 211.5(c)(1)(B)). Subsection (c)(2) permits a banking organization to exceed the limitations of subsection (c)(1) if it files an application with the appropriate federal banking agency and the agency has not, within sixty days after receipt, issued an order under subsection (d) disapproving the investment. The banking agencies can specify the information required in any such application, but it must be reasonably necessary to consider the factors described in subsection (d). An application is deemed received, and the sixty-day period commenced, once the agency accepts the application for processing. Upon receipt, the agency is required to file a copy with the Department of Commerce which is to be given a reasonable time to file its views. The sixty-day waiting period may be shortened if the agency issues written notice of its intent not to disapprove. The agencies are encouraged to issue such notices, when appropriate, in order to shorten further the regulatory process. The method of giving an agency the right to disapprove has been chosen instead of imposing a requirement of agency approval, because this section already establishes that it is in the public interest for banking organizations to take an equity participation in an export trading company. A proposed investment should thus be blocked only if the agency can find specific reasons for disapproving the particular transaction. This approach also tends to minimize the regulatory burden involved on both applicants and the agencies. Subsection (c)(3) gives any banking organization whose investment application under subsection (c)(2) has been disapproved by an agency, the right to seek review in a federal court of appeals. The organization has the choice of filing a petition for review in either the circuit where its principal office is located or in the Court of Appeals for the District of Columbia Circuit. The agency must compile and certify the record for review and file it promptly with the reviewing court. "Promptly" was chosen in order to encourage filing within the sixty days provided under the Federal Rules of Appellate Procedure. The standards for judicial review of a disapproval order are similar to those provided in the Administrative Procedure Act.

Subsec. (d). A proposed investment under subsection (c)(2) may be disapproved by the appropriate Federal banking agency if it finds that the export-related benefits of the proposal are outweighed by adverse banking, competitive, or other factors associated with the particular acquisition. In weighing export benefits, the agency must give due consideration to the views of the Department of Commerce and give special weight to proposals that will reach new sectors of the U.S. export market. Essentially, a proposed investment should be able to be made unless the agency can meet the burden of establishing specific reasons for disapproval that outweigh the likely export benefits. Any order must contain a statement of the basis for the agency's action and must be issued within the sixty-day period provided in subsection (c)(2).

Subsec. (e). This subsection contains safeguards to insure that bank involvement in trading companies does not lead to conflicts of interest, unsound banking practices, or unfair methods of competition. First, subsection (e)(1) provides that no banking organization holding stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to such company or its customers on a preferential basis. This meets a traditional concern of U.S. policy that banks not favor their affiliates in lending practices, because preferential lending threatens bank soundness and may provide unfair competitive advantages for affiliated customers. The language is similar to that employed in Section 8(c) of the International Banking Act of 1978. Lending limits, limits on loans to affiliates and to insiders otherwise ensure that a bank's credit involvement with an export trading company or its customers would be subject to prudential limitations. Subsection (e)(2) provides that, in the aggregate, no banking organization other than an Edge Act Corporation not engaged in banking could invest more than ten percent of its capital and surplus in the stock or other evidences of ownership of one or more export trading companies. This parallels a limitation on investments in Edge Act Corporations by national banks, and is intended to put an overall cap on any one banking organization's involvement in such commercial activities. This restriction thus protects against any exposure beyond traditional prudential limitations.

Subsec. (f). This subsection gives the appropriate federal banking agencies the authority to adopt such rules and regulations and to require such reports as are necessary to enable them to carry out the provisions of this section and prevent evasions thereof.

Section 6 would authorize the Export-Import Bank to provide loans or guarantees to help export trading companies meet operating expenses and make investments which would expand U.S. exports. The Bank could not extend loans or guarantees unless the Bank's Directors determined: (1) the loans or guarantees would facilitate exports which would not occur otherwise; (2) the company cannot locate sufficient financing on reasonable terms from commercial or other private sources; and (3) there is a reasonable assurance of repayment of the loans.

These standards are intended to insure that Eximbank support is provided only for promising export trading ventures which have not found adequate private financial support. Eximbank's role would be limited by additional provisions which specify that such loans and guarantees may not exceed $1 million per year or $2.5 million in total to any one company, nor exceed 50 percent of the total operating expenses of such company in any year. Total bank commitments under this section would be limited to $100 million and the authority to make new commitments would expire 5 years after enactment.

The purpose of this section is to encourage new ventures or significant expansion of existing firms by providing modest financial help with start-up costs for a limited period of years. Support would be provided at prevailing commercial interest rates.

Section 7 would authorize and direct Eximbank to guarantee not more than 80 percent of commercial loans extended to exporters of export trading companies and secured by export accounts receivable or inventories of exportable goods. Guarantees would only be provided when the Bank's Board of Directors judged such guarantees to be necessary to expand U.S. exports and enable the recipient of the partially guaranteed loan to conduct normal business operations. In short, the authority in this section is intended to stimulate additional private sector lending in support of exports—lending which is customary in other countries but not in the United States. As U.S. financial institutions acquire experience and confidence with loans secured by export receivables and inventory, Eximbank guarantees can be phased out.

Section 8 declares that the Act does not pre-empt State or local authorities from forming or participating in export trading companies, nor disqualify such companies for the Eximbank programs provided for in sections 6 and 7 of this Act.

Section 9 would afford to export trading companies, with respect to their export activities, the same antitrust exemption provided under the Webb-Pomerene Act to associations engaged exclusively in export trade. Export trading companies cannot be financially sound if they engage exclusively in export trade; furthermore, there seems no reason to force firms to form trade associations in order to enjoy whatever antitrust assurances the Webb-Pomerene Act provides.

Section 10(a) would provide that gross receipts of an export trading company from "export trade services" as well as the export of "services produced in the United States," as defined in the Act, are eligible DISC receipts. The purpose of the provision is to avoid forcing export trading companies to segregate artificially certain services in order to enjoy DISC status for the receipts from such services.

Section 10(b) would require the Assistant Secretary of Commerce, with the cooperation and assistance of the Director of the Internal Revenue Service to disseminate information to exporters and export trading companies on how to form and use DISCs.

Section 11 would amend Subchapter S of the Tax Code to permit an export trading company to use the provisions of that subchapter without limiting the foreign source income of such company to less than 20 per-

cent per annum. Export trading companies could not comply with the existing statutory restriction. Section 11 would also permit shareholders in companies eligible to use subchapter S to be companies owned by up to 15 individuals, as well as individuals, as presently required by subchapter S.●

● Mr. HEINZ. Mr. President, I am pleased to join with my distinguished colleague from Illinois in introducing the Export Trading Company Act of 1980. This bill is another step in the effort to create an environment more encouraging and conducive to the growth of U.S. exports. The bill will facilitate and promote the formation and operation of export trading companies. It is a revised version of S. 1663, introduced last year, which has already been the subject of hearings before the Subcommittee on International Finance of the Senate Banking Committee.

Pogo's famous remarks, "We have met the enemy and he is us," seems particularly relevant to the situation in which we find ourselves today in the international trading arena. All too frequently, we have been our own worst enemy. Where our trade competitors have incentives and governmental export promotion programs, we have created impediments and barriers for our exports to surmount before they can even begin to compete.

Our Nation's trade deficit over the last 3 years has totaled almost $90 billion. One result has been a severely weakened dollar and a vicious cycle with which we are all too familiar. The price of imports including energy rise, thereby inducing inflation, which in turn leads to economic slowdown and budgetary deficits. The result is the sort of recession we find ourselves in today.

Obviously, we are not going to solve this problem overnight. But every successful program of trade promotion is a step in the right direction. Small- and medium-sized businesses have too long been excluded from a significant role in our Nation's export picture. I have heard many expert witnesses say that the 15,000 to 20,000 small- to medium-sized businesses which have been identified by the Commerce Department as potential exports forego that market because they lack the skills and have little access to the advice which would make them effective competitors in the export market. I believe that this bill will help to remedy this situation by encouraging the development of intermediaries which will be able to provide the marketing and financial tools necessary to help smaller businesses, while at the same time helping them to benefit from economies of scale and the diffusion of risk.

Questions have been raised about the provision allowing State and local governments to participate in the formation of trading companies if they meet all the other provisions of the bill. There are legitimate concerns on this issue which deserve further exploration at hearings which will be held later this month. That provision may have to be further refined and clarified to meet the objections voiced by thoughtful critics.

Mr. President, it is my hope that my colleagues will study this bill, read the extensive hearing record on the issue, and realize the necessity of encouraging small- and medium-sized businesses to participate in the export market. I am sure that they will then join me in promoting the passage of this legislation.

By Mr. MATHIAS (for himself, Mr. WEICKER, Mr. BUMPERS, and Mr. YOUNG):

S.J. Res. 150. Joint resolution to authorize and request the President to designate the week of September 21–27, 1980, as "National Cystic Fibrosis Week"; to the Committee on the Judiciary.

CYSTIC FIBROSIS WEEK

● Mr. MATHIAS. Mr. President, cystic fibrosis is the No. 1 genetic killer of young people in America. It affects the lungs, digestion, and lives of thousands of American children and young adults. Yet the public is, for the most part, uninformed about even the most basic facts of this serious and debilitating disease—its symptoms and its effect on the lives of CF victims and their families. Because public understanding is important, I am introducing a resolution that proclaims the third week in September of 1980, as "National Cystic Fibrosis Week." By enhancing public awareness of cystic fibrosis (CF), National Cystic Fibrosis Week will encourage earlier diagnosis and care, and help create a significant increase in the resources available for research into the cause, treatment, and cure of the disease. This resolution is identical to House Joint Resolution 445, introduced by Congressman SILVIO CONTE, of Massachusetts.

Approximately 1,500 children are born each year in this country with CF. Cystic fibrosis is genetically transmitted, and about 5 percent of the Caucasian population are believed to be symptomless carriers of the disease. The disease causes cells to secrete excessive amounts of thick, sticky mucus. This mucus clogs the lungs, making breathing difficult, and it interferes with the flow of digestive enzymes from the pancreas to the intestines, impeding the digestion of food. The risks of lung infection and diabetes are substantial and the heart and lungs are placed under tremendous strain.

While serving in the Senate, I have had the opportunity to support several efforts to generate Federal funds for a cystic fibrosis research program through the National Institutes of Health. Although the disease remains a mystery to medical science, treatment and basic research advances during the past quarter century have extended the life expectancy of CF victims from less than 2 years in 1955 to over 20 years today. With passage of the National Cystic Fibrosis Week resolution, I hope that the national commitment to cystic fibrosis research and care will continue to grow.

Much of this progress would not have been possible without the support, dedication, and commitment of the Cystic Fibrosis Foundation. Twenty-five years ago, a small group of concerned parents, physicians, and friends formed this national organization which has become one of the Nation's leading voluntary health associations. Through the efforts of this network of committed volunteers and staff, the foundation's budget for research, professional training, and health care delivery will total $6.6 million for fiscal year 1980–81.

Public education is also a major focus of the foundation's activities. Society needs to be informed about the symptoms of CF, particularly as they occur in infancy, to facilitate early recognition and diagnosis. Unfortunately, cystic fibrosis is often confused with other diseases and such misunderstandings are rarely clarified. The public must be aware that those who have CF can, and want to be, successful in school and work for as long as their health allows. With the increased availability of new medications, treatments, and therapies, that period of relative health is becoming longer each year.

The Cystic Fibrosis Foundation has come a long way in its battle against the No. 1 genetic killer of American children. But as the foundation moves into its 25th year, it is apparent that much more needs to be done to provide the 13,000 to 30,000 youngsters who have CF with hope for a brighter and healthier future. Enactment of the resolution I am introducing today will help these young people realize their dream. Therefore, I am requesting that my colleagues join in the fight to wipe out cystic fibrosis by lending their support to this important and necessary resolution.

Mr. President, I ask unanimous consent that the text of my resolution and a fact sheet prepared by the Cystic Fibrosis Foundation which provides some pertinent information concerning the disease and the foundation's activities be printed in the RECORD at this point.

There being no objection, the joint resolution and fact sheet were ordered to be printed in the RECORD, as follows:

S.J. RES. 150

Whereas cystic fibrosis is the number one genetic killer of children in America, and in this country between fifteen hundred and twenty-five hundred children are born with the disease each year;

Whereas public understanding of cystic fibrosis is essential to enhance early detection and treatment of the disease and reduce the misunderstanding and confusion concerning the symptoms of cystic fibrosis; and

Whereas a national awareness of the cystic fibrosis problem will stimulate interest and concern leading to increased research and eventually a cure for cystic fibrosis: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of September 21-27th, 1980, is designated as "National Cystic Fibrosis Week", and the President is authorized and requested to issue a proclamation calling upon Federal, State, and local government agencies and the people of the United States to observe that week with appropriate ceremonies, programs, and activities.

FACT SHEET: CYSTIC FIBROSIS: THE DISEASE AND THE FOUNDATION

For nearly a quarter of a century, the Cystic Fibrosis Foundation has been the leading force in the battle against Cystic Fibrosis (CF). Although significant progress has been made toward improved clinical and psycho-social management of CF patients, this disease, the most common genetic killer

to vote for a truly balanced Federal budget.

I wish I could vote for the Latta amendment, but I cannot in good conscience. First, it calls for an unprecedented increase in peacetime military spending—an increase that in my view is absolutely unwarranted. We need to strengthen and streamline our national defense. But surely the lessons of the past have shown we do not solve complex problems by simply hurling money at them. It does not work for social programs, and it does not work for military programs. We will not be any safer if we hand over unspecified billions of dollars to the Pentagon, yet sadly some think so.

Even more fundamentally I cannot support the Latta amendment because it calls for a major tax cut, even though evidence indicates this tax cut will fuel inflation. I would love to bestow an election-year gift on the voters in my district. But I won't lie to them that they can have a major tax cut and curb inflation, too. And to say we can do both is a deception.

Backers of this major tax cut adhere to the "supply side" economics. So do I. That is why I cannot understand why these advocates are trying to do everything they can to stimulate demand at a time when our problem is to stimulate increased supply. If we are to have a tax cut, and I think we should have an intelligent tax cut this year, it should be one that stimulates increased productivity—without inflaming inflation.

No matter what anyone says here today, the Latta amendment will not produce a balanced Federal budget. It talks big about slashing spending so voters can get a few dollars in their pocket from a tax cut. But when the crunch comes, and recession is firmly set in, spending will increase and the Federal Government once again will be in the business of running deficits.

The people of America do not want snake oil. They want results. They understand the straightforward economics of going without a tax cut, in return for a better tomorrow with inflation arrested so a dollar is worth a dollar.

The way we get to that tomorrow is through a real balanced Federal budget—a balance that will stick. The options before us are not perfect. But on balance, the Latta amendment runs the greater risk of returning to deficits than the committee version of the budget resolution, and that is why I oppose it.●

EXPORT PROMOTION AND EXPORT TRADING COMPANY ACT OF 1980

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. BONKER) is recognized for 5 minutes.

● Mr. BONKER. Mr. Speaker, I rise today to introduce the Export Promotion and Export Trading Company Act of 1980.

The United States finds itself at a disadvantage today in the world market. This is reflected in part in the $50 billion a year balance-of-trade deficit we experience each year. Although this is due in large measure to our reliance on foreign oil, it is a fact that the United States is not sophisticated in dealing with the intricacies of foreign markets.

As a result, tens of thousands of American producers do not presently realize their export potential. Some 98 percent of all companies do not export. A mere 200 companies export 80 percent of our entire trade outside our borders.

This situation is no more acute than in the wood products industry. As a country we are a heavy exporter of raw logs—but our export of finished products is all but negligible. We are not obtaining the full economic benefit of our natural resource. In addition, we continue to import some 30 percent of our finished wood products from Canada.

This makes even less sense at a time when high interest rates have crippled the housing and lumber industries.

The domestic market for finished wood products has vanished as housing starts have plummeted. In Washington State, housing starts are down an estimated 35 percent below last year. The lumber industry is in turn dramatically affected—more than 100 of the 818 sawmills in the 12 Western States have been closed, with another 275 curtailing shifts or making other adjustments. In Washington State, about one-third of the 4,500 plywood workers are unemployed. Many smaller sawmills have been particularly hurt, and may never go back into business.

We in Congress must do what we can to promote export of our finished products, at a time when the domestic market is in trouble. Today, our smaller mills—as well as many other "little" manufacturers—simply do not have the expertise to barter and negotiate effectively with foreign governments. As a result, we are forced to take these markets as we find them, limiting ourselves to the exportation of raw resources, while the foreign governments protect their domestic processing industries at the expense of our own.

Logs are not the only area of the economy where the United States is basically in a colonial situation. Many manufacturers do not export because exporting involves unfamiliar risks and requires specialized knowledge and skills.

Greater efforts to encourage and assist U.S. producers to export directly are desirable, but for most producers the marginal costs of developing fully their export opportunities abroad will prove prohibitive.

Export success depends on intermediaries—middlemen, if you will, which, by diversifying trade risks and developing economies of scale in marketing, transportation, financing, and other export trade services, can do the exporting for U.S. producers.

A great variety of enterprises provide export trade services to U.S. producers—freight forwarders, brokers, shippers, jobbers, insurance companies, commercial banks, export management companies, advertising firms, trade lawyers, foreign purchasing agents and others. But most fulfill only one or a few of the many functions required to engage in export trade.

A few American trading companies and trade associations specializing in agricultural commodities or raw materials—such as timber and grain—do exist, but they do little to expand exports of U.S. manufacturers.

U.S. producers have not until recently had access to general purpose trading companies. Such companies now operate in the United States, but only on behalf of Japan, Korea, and Western European countries.

Entities which are owned or subsidized by foreign governments compete directly with private U.S. exporters for shares of the world market.

The free market, in theory, ought to have generated American export trading companies long ago. But the market forces are imperfect, due to Government regulation, the structure of American enterprise, and traditional ways of doing business.

For example, Government regulations exclude U.S. banks from offering most export trading services.

Federal Maritime Commission regulations prevent export traders that take title to goods from receiving commissions for freight brokerage from carriers.

Antitrust uncertainties deter U.S. companies from expanding export trading activities in cooperation with other U.S. producers.

American businessmen by and large are unfamiliar with foreign customs, do not speak foreign languages, and are unaware of foreign market opportunities.

The large multinational companies have developed their own export markets—but they do little to assist other potential exporters.

The rapidly growing service-related industries are vital to the well-being of the U.S. economy since they create jobs for 7 out of every 10 Americans, provide 65 percent of the Nation's gross national product and offer the greatest potential for significantly increased industrial trade involving finished products. In addition, small- and medium-sized businesses in the United States engaged in international transactions would benefit from the development of export trading companies, which would enable them to pool resources and technical expertise and to achieve economies of scale and would otherwise assist them in competing in foreign markets.

Without new legislation to reduce impediments and encourage U.S. trading companies, we will simply fail to realize our export potential as a country.

That is why I am introducing this legislation today, which will facilitate formation of export trading companies and the expansion of export trade services generally.

The bill directs the Secretary of Commerce to provide information and advice to assist interested persons to form and operate export trading companies.

It would afford to these companies, with respect to their export activities, the same antitrust exemption provided under the Webb-Pomerene Act to associations engaged exclusively in export

trade. Export trading companies cannot be financially sound if they engage exclusively in export trade; furthermore, there seems to be no reason to force firms to form trade associations in order to enjoy whatever antitrust assurances the Webb-Pomerene Act provides.

The legislation also requires that 5 years after the enactment of this act, the President shall appoint a task force to study the effect of this act on domestic competition, and on the trade deficit of the United States, and that such a study should be completed within 1 year.

I expect to offer amendments in subcommittee, dealing with the involvement of our financial institutions. In addition, I want to provide a mechanism to insure that "second-tier" manufacturers and smaller concerns and financial institutions are guaranteed access to money markets, which is crucial to the entry into this speculative field.

In summary, the growth of U.S. export trading companies can improve U.S. competitiveness over the long term. It can add billions of dollars of U.S. exports which otherwise would not be produced. I believe Congress must take the lead in this field, and I encourage my colleagues to join me in this effort.

I include the following:

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the legislation may be cited as the "export promotion and export trading company act of 1980."

Section 2 contains the statement of findings and purpose. The findings point to the advantages export trading companies would have in assisting many U.S. producers, especially small- and medium-sized businesses, to export. The purpose of the bill is to increase U.S. exports by making U.S. exporters more competitive with exporters of other countries by directing the Secretary of Commerce to encourage and promote the formation and operation of export trading companies.

Section 3 contains definitions of the following terms as used in the bill: "export trade," "goods produced in the United States," "export trade services," "export trading company," "United States," "Secretary," "State," and "company."

Section 4 would require the Secretary of Commerce to provide information and advice to assist interested persons to form and operate export trading companies.

Section 5 declares that the act does not pre-empt state or local authorities from forming or participating in export trading companies.

Section 6 would afford to export trading companies, with respect to their export activities, the same antitrust exemption provided under the Webb-Pomerene Act to associations engaged exclusively in export trade. Export trading companies cannot be financially sound if they engage exclusively in export trade; furthermore, there seems no reason to force firms to form trade associations in order to enjoy whatever antitrust assurances the Webb-Pomerene Act provides.

Section 7 would require that five years after the enactment of this act the President shall appoint a task force to study the effect of this act on domestic competition and on the trade deficit of the United States and such a study should be completed within one year.

H.R. 7230

A bill to direct the Secretary of Commerce to encourage the formation and operation of export trading companies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Promotion and Export Trading Company Act of 1980."

STATEMENT OF PURPOSE AND FINDINGS

SEC. 2. (a) It is the purpose of this Act, in order to make United States exporters more competitive with exporters of other countries, to direct the Secretary of Commerce to encourage and promote the formation and operation of export trading companies by providing advice and information to interested persons.

(b) The Congress finds that—

(1) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports;

(2) the Department of Commerce also has the responsibility of facilitating the export of finished products from U.S. manufacturers;

(3) tens of thousands of United States companies produce exportable goods or services but do not engage in exporting;

(4) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(5) exporting requires extensive specialized knowledge and skills and entails risks, not otherwise assumed, the costs of which smaller producers cannot absorb because of an inability to achieve economies of scale;

(6) exporting services in the United States are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant number of potential United States exporters;

(7) the United States lacks well-developed export trade intermediaries, such as trading companies, which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(8) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations;

(9) entities which are owned or subsidized by foreign governments compete directly with private United States exporters for shares of the world market;

(10) the rapidly growing service-related industries are vital to the well-being of the United States economy since they create jobs for seven out of every ten Americans, provide 65 percent of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products; and

(11) small- and medium-sized businesses in the United States engaged in international transactions would benefit from the development of export trading companies, which would enable them to pool resources and technical expertise and to achieve economies of scale and would otherwise assist them in competing in foreign markets.

DEFINITIONS

SEC. 3. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods produced in the United States, or services produced in the United States, which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "goods produced in the United States" means goods manufactured, produced, grown, or extracted in the United States, not more than 50 percent of the fair market value of which is attributable to articles imported into the United States;

(3) the term "services produced in the United States" includes, but is not limited to, amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services, not less than 50 percent of the fair market value of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, international market research, advertising, marketing, insurance, legal assistance, transportation, including trade documentation and freight forwarding, comunication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(5) the term "export trading company" means a company which does business under the laws of the United States or any State and which is organized and operated principally for the purpose of—

(A) exporting goods produced in the United States or services produced in the United States; and

(B) facilitating the exportation of goods produced in the United States or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(7) the term "Secretary" means the Secretary of Commerce;

(8) the term "State" includes the District of Columbia; and

(9) the term "company" means any corporation, partnership, association, or similar organization.

(b) The Secretary may by regulation further define any term defined in subsection (a), in order to carry out the purposes of this Act.

FUNCTIONS OF THE SECRETARY

SEC. 4. The Secretary shall promote and encourage the formation and operation of export trading companies by providing information and advice to interested persons. The Secretary shall provide a referral service to facilitate contact between producers of exportable goods and services and concerns offering export trade services.

ELIGIBILITY OF STATE OR LOCAL GOVERNMENT-OWNED EXPORT TRADING COMPANIES

SEC. 5. Nothing in this Act preempts or otherwise restricts or prevents any State or local government or other governmental authority from organizing, owning, or otherwise participating in or supporting export trading companies.

ELIGIBILITY UNDER THE WEBB-POMERENE ACT

SEC. 6. Section 2 of the Webb-Pomerene Act (15 U.S.C. 62) is amended—

(1) by inserting after "engaged solely in such export trade," the following: "or with respect solely to its export trade (as defined in section 3(1) of the Export Promotion and Export Trading Company Act of 1980), any export trading company as defined in section 3(5) of the Export Promotion and Export Trading Company Act of 1980,"; and

(2) by inserting "or such export trading company" after "association" each place, after the first, it appears.

TASK FORCE STUDY

SEC. 7. Five years after the date of the enactment of this Act, the President shall appoint a task force to study the effect the operation of this Act on domestic competition and on the trade deficit of the United States and to recommend either continuation, revision, or termination of this Act

and the amendments made by this Act. Such task force shall, within one year after its appointment, complete such study and submit such recommendations to the President.●

WE MUST CUT OIL IMPORTS NOW

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. NEAL) is recognized for 5 minutes.

● Mr. NEAL. Mr. Speaker, as one who believes we must reduce our dangerous dependence on foreign oil, I suspect that we are allowing ourselves to be lulled into a sense of false security by an apparent glut on the world oil market. Our memory tends to shorten, I am afraid, in direct proportion to the length of the lines at the gasoline pumps.

Despite the present supply situation, however, there remain ominous signs for the future. I have seen, heard, or read nothing that justifies any great degree of optimism. Indeed, all the signs point to even more uncertainty in the Middle East, especially the Persian Gulf area. We must begin to prepare, Mr. Speaker, for the day when we well may have to do without a drop of oil from that area. The only way I know how to do it is to wean ourselves of that dangerous dependence. That is why I have proposed, in H.R. 6693, that the President immediately exercise his authority to establish mandatory conservation targets for each of the States, and that the goal of those targets should be an overall reduction of 20 percent in oil imports over a 12-month period. Because we import about half of all the oil we use, a 20-percent cutback in imports would require an overall reduction in use of 10 percent. That, I am convinced, is a realistic goal.

We have managed to do quite well without Iranian oil since the seizure of our Embassy in Tehran. This, too, contributes to a false sense of security, because we tend to forget that we are far more dependent on oil from Saudi Arabia, whose shipping lanes also pass through the Strait of Hormuz. Moreover, it would seem that the political situation is unstable in the entire Persian Gulf area, and there are suggestions that what happened in Iran might well happen in any, or all of the Arab States.

In a recent Washington Star article, "Scenario for a World Nightmare," Charles K. Ebinger and Richard J. Kessler quoted the U.S. Ambassador to Saudi Arabia in stating that a drastic cutback in Saudi exports would trigger "the greatest worldwide depression we have ever seen." Mr. Ebinger is director of the Project on Energy and National Security at Georgetown University's Center for Strategic and International Studies. Mr. Kessler is deputy director of the project. Their analysis is so stark and so shocking that I believe we should study it carefully.

The article follows:

SCENARIO FOR A WORLD NIGHTMARE

(By Charles K. Ebinger and Richard J. Kessler)

(The beginning of the oil nightmare for the West came just after midnight on Nov. 9, 1980. The House of Saud had fallen in Saudi Arabia. A polyglot government representing disaffected Saudis and the nation's huge numbers of disenfranchised workers—Yemenis, Iranians and Palestinians—had taken power.

(A new Islamic Republic was proclaimed, but it was unable to stop the fighting, looting and sabotage that continued in the country for several months.

(Oil pipelines were broken. Some of the major pumping stations were dynamited. The huge gray oil tankers riding at anchor off the oil port of Ras Tanura, remained empty.

(Finally the new government declared it was breaking all cultural and commercial ties to the west. The black gold would remain in the ground. Saudi Arabia would no longer export oil.)

Just what would happen if the above scenario—imaginary, to be sure—became true? The question happens to be a matter of much concern to Western planners. It clearly would be a nightmare because much of the vital economic machinery of the west runs on Saudi oil.

How much of the machinery would stop? How severe would the devastating economic and political pain be? How well would the international agreements designed to minimize such a shortfall work? These are all open questions that deserve thoughtful consideration, and at the highest levels of Western governments.

What is known is that the U.S. ambassador to Saudi Arabia has said that a drastic cutback in Saudi exports would trigger "the greatest world-wide depression we've ever seen." And he is assuming only a partial cutoff.

CIA analysts who have studied the problem have concluded that there would be little the U.S. could do to cushion itself or its allies from the shock, at least in the near term. The available options are few.

The immediate crunch would be felt first in Western Europe and Japan. Europe gets three million barrels of oil a day from the Saudis—26 percent of its requirements. The years of cheap oil from the Middle East have left their mark on European energy systems: There are oil tanks where the coal piles used to be.

For example in 1977, 51 percent of France's total energy needs were met by imported oil. Of this, 37 percent came from Saudi Arabia.

Japan is in a similar position, importing 1.5 million barrels or 32 percent of its requirements from Saudi Arabia.

Remember the gasoline lines and resulting chaos that happened here from a tiny fraction of that kind of shortfall during the 1973–74 Arab oil embargo? That was roughly a four percent shortfall. Multiply it by a factor of five or six and you will get some idea of what might happen in Europe, Japan and the U.S. as the Western powers struggle to deal with a Saudi shortfall.

A sudden stoppage of Saudi oil would mean much more than gasoline lines. Some highways would be nearly empties. Some factories would stop. Some buildings and homes would go unheated. The lights of our strongest allies would begin to go out.

At that, they would be relatively well off compared with the Third World countries that are already having severe difficulty meeting their oil bills.

A Saudi cutoff would tempt some OPEC countries to breach their long-term supply contracts and sell oil in the more lucrative *spot market*. That could make $35-a-barrel crude a distant memory. Seventy dollars a barrel may be more like it.

The developing countries are already in an economic tailspin from the 1979 round of price increases which added $12 billion onto their international debts. Commercial banks that aided them during the 1973–74 crises no longer seem willing to throw good money after bad.

The next round of price increases could lead to extremely low growth, extreme political instabilities, rampant hoarding, and probably famine among the nations that have no domestic energy resources to fall back on.

Under the terms of the emergency oil sharing system of the International Energy Agency (IEA), a system developed in 1974 by the U.S. and 19 other signatories, what oil that remains in the supply pipeline will have to be shared in a crisis.

The largest sharer in this scenario would probably be the United States. Tankers en route to U.S. East and Gulf Coast would have to be diverted to Europe.

The trigger for the emergency sharing system to go in effect is shortfall of 7 percent. In a Saudi cutoff the alarms would be going off all over the place because the average reduction in Europe would be somewhere around 25 percent.

All countries who want aid under this system would have to immediately impose rationing and other controls to cut petroleum demands by at least 10 percent.

SKEPTICISM IN EUROPE

There is some skepticism within Europe over just how much sharing would actually occur in the case of a severe shortfall. The Financial Times, for example, recently quoted a senior French oil executive as saying: "Wait until the next real crisis. You will find governments and companies forgetting all about sharing and scrambling for supplies."

Last year Sweden tried to invoke the emergency sharing agreement, but the governing board of the International Energy Agency ruled the nation's shortfall did not fit all of the requirements of the agreement. In the meantime international oil companies began shipping more oil to Sweden.

In the case of a Saudi cutoff, the majors' flexibility to handle crises privately simply would not be there.

The failure of Western Europe and Japan to fully support the U.S. in its efforts to free the American hostages in Teheran is another clue to the level of international agreement that can be expected when oil supplies hang in the balance.

While its economy would exhibit the same symptoms manifested in Europe and Japan, the effect here would be delayed. The resiliency of the larger U.S. economy, coupled with our greater abundance of domestic oil, coal, natural gas and other resources would mean that the U.S. is probably better able to withstand the tremors of a major world wide depression.

But it would certainly not be business as usual.

The U.S. obtains about 1.3 million barrels a day from Saudi Arabia, while it consumes 18.8 million barrels. The difference between the U.S. and its allies is that while we produce almost 50 percent of our daily oil needs, Europe produces 14 percent and Japan produces nothing.

At any given time there is enough oil in the U.S. system—tankers at sea, crude oil stocks in U.S. refineries and oil stored in the salt caverns of the Strategic Petroleum Reserve—that, in theory, the U.S. could maintain its present rate of consumption for approximately 300 days in the face of a Saudi cutoff.

IN MONTHS, THE CRUNCH

The actual breathing time, however, would be much less than that because some of the incoming oil would have to be diverted to help our allies. The Strategic Petroleum Reserve's 91 million barrels of crude stored in hollowed-out salt domes along the Gulf Coast could give us about 70 days worth of relief from the Saudi loss, but when that supply is exhausted there will be little left to put in the network of pipelines that lead to the industrial upper Middle West and the East Coast.

is nothing worth dying for" was widely acclaimed. To which we can only observe that where there is nothing worth dying for, there is likely to be little or nothing worth living for. The "me" era of our recent past must give way to a new sense of patriotism, a concern for the survival of America. We in America have much that is worth living for—and we want to maintain it both for ourselves and for our posterity. Indeed, this Nation remains the last best hope of freedom—as witness the influx of refugees each day from lands that have fallen under brutal tyrannies. That exodus of refugees—Afghans, Vietnamese, Cambodians, Cubans—tells us much about the nature of communism in practice. It is no accident that the Soviets have increased their pressure upon the dissidents in their midst even as they are dispatching their troops to Afghanistan.

I have quoted repeatedly from Winston Churchill's speeches in the thirties because they seem to me remarkably pertinent for our day. Far-seeing then, they are no less so now; though the nations are changed, the principles endure. The Great War of 1914–18 came about because of an imbalance of power. So with the second war. It need not be the case with a possible third, provided we are determined to preserve our strength and to use it with restraint and with intelligence.

Let me close with Mr. Churchill's somber peroration to his speech in October 1938, that speech which struck an unwelcome note in the midst of then popular enthusiasm for Munich:

> The people should know that there has been gross neglect and deficiency in our defenses; they should know that we have sustained a defeat without a war, the consequences of which will travel far with us along our road; they should know that we have passed an awful milestone in our history, when the whole equilibrium of Europe has been deranged, and that the terrible words have for the time being been pronounced against the Western democracies. "Thou are weighed in the balance and found wanting." And do not suppose that this is the end. This is only the beginning of the reckoning. This is only the first sip, the first foretaste of a bitter cup which will be proffered to us year by year unless by a supreme recovery of moral health and martial vigour, we arise again and take our stand for freedom as in the olden time.

For America in 1980, this is not—or need not be—"the beginning of the reckoning." May we come to see this critical time as the beginning of our awakening, painful and unpleasant in many respects yet also bracing and renewing. The late Bishop Sheen once suggested that we ought to raise a statue of duty, perhaps on the west coast, to match the familiar Statue of Liberty in the East and to serve as a reminder that true liberty depends upon the commitment of our people to the duties of responsible citizenship. For liberty to flourish, there must be security for the individual and for the Nation.

In the great phrase of William Pitt the Elder, "our watchword must be security." Only then may we hope to keep the peace in a troubled world.

□ 1800
IN SUPPORT OF THE SIMON AMENDMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. DODD) is recognized for 5 minutes.

● Mr. DODD. Mr. Speaker, I rise in support of the amendment offered by my colleague from Illinois (Mr. SIMON). The amendment would delete $500 million from the research and development budget of the Air Force for the MX missile mobile basing mode, while leaving intact the $1.1 billion requested for the development of the MX missile itself.

Yesterday, I voted against the amendment to the Department of Defense authorization bill offered by Mr. DELLUMS which would have deleted the entire $1.6 billion for development of the MX missile and its basing mode. While I am not convinced of the necessity of building a new intercontinental ballistic missile regardless of how it is based, I felt that it would not be prudent to stop all research and development work on the missile before the issue of a proper basing configuration can be resolved, and for that reason I opposed the Dellums amendment.

However, during the course of the debate on the MX missile basing system, it has become obvious that a great deal of confusion still exists in the Defense Department itself over the proper basing of this missile. Just last week, the Air Force publicly abandoned its so-called racetrack basing system and began advocating a linear basing system. Yet only 1 week after this latest change, we in the House are being asked to blindly approve this system. It is instructive to remember that it was not too long ago that the Defense Department was advocating a hidden trench basing mode and then the multiple aim point, or MAP, mode and later the multiple protective shelter, or MPS, system. It appears that every 3 or 4 months the Defense Department changes the way in which it wants to base the MX.

The Simon amendment makes a great deal of sense because it simply delays the decision on the basing mode and allocates $66 million for further study into other basing ideas. The amendment also prohibits the use of Federal land for the basing of the MX missile until the results of the study have been reported back to Congress.

I am deeply concerned over the entire concept of deploying a mobile, land-based ICBM. When the MX missile system was first proposed, the administration assumed that the SALT II treaty would be ratified and in effect. Because the SALT II treaty limits the number of warheads the Soviets can deploy on their largest ICBM's, under SALT II we could be reasonably assured of building more MX launch points than the Soviets could deploy warheads.

However, with the future of SALT II uncertain, a land-based MX system may be obsolete before it is built. All the Soviet Union would have to do to overcome a land-based MX system is to commit more warheads to overcoming the system than the number of launch points the system has.

I am also concerned that not enough thought has gone into alternative methods for deploying the MX missile if we in fact decide it is needed. Several respected defense analysts, including Sidney Drell and Richard Garwin, have proposed deploying the MX missile on small nonnuclear submarines which would patrol near the U.S. coastline. This concept, known as SUM for shallow underwater mobile, has not received sufficient study in my view. Such a system might well be far less vulnerable to a Soviet first strike, and therefore more strategically stabilizing, than any conceivable land-based system. In any case, whatever the particular merits of the SUM concept might be, it is clear that the basing system most recently proposed by the Air Force will not serve as a credible nuclear deterrent.

The exceptionally high cost of the current MX deployment scheme, variously estimated between $33 billion and $60 billion, should give us pause before we forge blindly ahead. Considering the track record of most major weapons systems, it is almost certain that the final cost of the MX system will be considerably above even the $60 billion estimate.

The Simon amendment will not kill the MX missile itself. It will simply allow us to fully consider and eventually select a sensible basing system for this new generation ICBM if we decide our national security requires it.

I urge my colleagues to support this amendment.●

THE EXPORT TRADING COMPANY ACT OF 1980

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. AUCOIN) is recognized for 5 minutes.

● Mr. AUCOIN. Mr. Speaker, I am introducing today legislation to promote the formation and operation of export trading companies, the Export Trading Company Promotion Act of 1980. The purpose is to expand the availability of international trade services to American producers and, in the long run, help to reverse dangerous trends in our export performance.

On many occasions, I have documented for my colleagues the plight of the United States in the international marketplace and the distressing picture of our worsening trade balance. While there has been slight improvement recently in the balance of trade, the overall trends remain substantially unchanged:

We continue to run a trade deficit, last year in excess of $25 billion.

Our share of world markets has dropped over the last decade from over 21 percent to around 12 percent—while the total value of world exports climbed by almost $1 billion.

Growth in American productivity continues to decline, expanding by only 1.7

percent in 1977 and by only 0.8 of 1 percent the following year.

The answer to reversing these trends is manifold and includes a number of small but important actions by the Congress. Last year, for example, we approved the Multilateral Trade Agreements Act and opened the way for expanded trade with the People's Republic of China. And the fight for increased funding for the Eximbank continues.

However, the legislation I introduce today is bolder, and a more impelling step to mobilize the productive and commercial resources of the country for one end: export.

If there is one piece of evidence that underscores the need for bold action, it is this: Less than 10 percent of all manufacturing companies in the United States are involved in export trade, slightly more than 30,000 firms. What about the other 230,000 companies?

One way to encourage more of these firms to enter the international market is through export trading companies—a form of which is used quite successfully by Japan, for example, to build its international trade volume to unprecedented heights. The 10 top trading conglomerates in Japan are responsible for approximately 60 percent of that country's exports.

Recognizing that trading companies can play a critical role in expanding our share of world markets, what, one might ask, impedes their formation and why is legislation necessary?

The answer rests in part with Federal laws and regulation and in part with the structure of enterprise and our traditional ways of doing business. Even though financing has long been recognized as a frequent stumbling block for fledgling exporters, U.S. banks are prevented from offering most export trading services. Also uncertainties over our antitrust laws discourages cooperation among U.S. producers in the export field.

The Export Trading Company Promotion Act of 1980 seeks to surmount these barriers. Under the bill, an export trading company is defined as a U.S. company organized for the purpose of: First, exporting goods or services produced in the United States; and second, facilitating the export of goods or services produced in the United States by another, unaffiliated company or person.

The key provisions of the AuCoin trading company bill include a provision to allow bank participation in a trading company and an exemption from U.S. antitrust laws under the Webb-Pomerene Act.

The banking provisions of this bill will provide this much-needed assistance. To prevent a bank from giving special treatment to its trading company subsidiary, the bill includes a prohibition against preferential lending. Also bank ownership is limited to 5 percent of capital and surplus in no more than 50 percent of the trading company without approval of the appropriate Federal banking agency.

Also, the bill extends to export trading companies the protection of the Webb-Pomerene Act. This law allows competing firms to form an association exclusively for export purposes, granting them qualified exemption from antitrust laws. They may provide informational services to their members, as well as buy and sell abroad.

To further encourage the formation of export trading companies, the legislation provides for start-up assistance and inventory guarantees from the U.S. Export-Import Bank and qualifies trading companies for income tax differals as Domestic International Sales Corporations.

Also, the bill would amend subchapter S of the Internal Revenue Code, which permits corporations of 15 or fewer shareholders to pass through certain losses to their shareholders. The bill would allow export trading companies to qualify under subchapter S if owned by small business corporations as defined by the Code.

Finally, it requires that the U.S. Trade Representative review the effect of the law after 5 years and report to Congress.

To show how this legislation would encourage expanded exports, we might look at the hypothetical case of ABC Manufacturing, a small company that makes a line of blood sampling equipment for medical laboratories. ABC has a healthy market for its product in the United States, but prospects are not bright for that market to continue to expand at past rates of growth. What to do?

One place the firm can turn to is the international market. But the company has no expertise in marketing overseas, let alone handling the somewhat more complicated problems with shipping internationally. Moreover, which overseas market should the company explore first as a likely prospect for penetration?

In this situation, the firm, under the Export Trading Company Promotion Act, can turn to an export trading company and seek to purchase its marketing and export services directly.

The trading company, through its expertise in international markets and network of overseas offices, undertakes to find the customers—in this case a hospital in Sri Lanka. It handles the orders and ships the product. Because the trading company is partly owned by a bank, it can also provide financing for the transactions. Because the trading company is also building a hospital in Peru, it will be able to sell the firm's laboratory equipment as part of the total construction package. By being able to tap an overseas sales and distribution network as well as financing and shipping assistance, the firm has made additional sales that otherwise would be difficult on its own, or would not be made at all.

In this case, the firm sells abroad as a subcontractor or supplier to a larger effort. But the legislation would also allow ABC Manufacturing to buy into a trading company in direct partnership with a bank or other firms. As customer or owner, ABC's possibilities for different kinds of transactions are seemingly endless—and all would expand the company's sales, not to mention American exports.

Mr. Speaker, this is a necessarily simplified example of how American firms can take advantage of this legislation. Moreover, I have no illusion that the Export Trading Company Promotion Act will resolve all of our trade woes. But it will help significantly and I call upon my colleagues to give this measure sincere and early consideration.

Already, the Senate Banking Committee has approved similar legislation, sponsored by Senator ADLAI STEVENSON. My bill closely parallels the Stevenson proposal.

I am delighted to see a growing interest by Members of the House in trading company legislation and pleased that two other proposals on this subject have been introduced. Given the provisions of the bill which touch the jurisdiction of at least four committees, I am hopeful that every effort will be made to assure adequate but expeditious consideration and that those most keenly interested in trading company legislation will form a common front to move this vital piece of legislation ahead.

THE PLIGHT OF ALEXANDER PARITSKY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. LEVITAS) is recognized for 5 minutes.

● Mr. LEVITAS. Mr. Speaker, I am pleased to join my colleague, Mr. MAGUIRE, and others in participating in "The Spirit of Helsinki, Vigil 1980," in an effort to improve emigration for Soviet Jews.

Today I would like to discuss the case of Alexander Paritsky, his wife and two daughters, who live in Kharkov in the U.S.S.R. Paritsky has been accused of various anti-Soviet crimes which could produce stiff penalties if brought to trial.

Paritsky, a Ph. D., is a specialist in ocean electronics who lost his job when he applied to emigrate from the U.S.S.R. in 1976. He now works long hours as an elevator repairman.

Primary among his alleged crimes is the contention that he staged an anti-Soviet demonstration at the monument commemorating the murder of 30,000 Kharkov Jews by the Fascists in 1941 and 1942. Paritsky says that he, his wife Paulina, and a friend did visit the monument privately, but when they tried to place flowers there they were turned away and forced to place the bouquet on the grave hill 10 meters away.

Paritsky has been told that the Kharkov prosecutor is considering whether to charge him with slandering the Soviet Union in his contacts with foreigners and taking part in other unnamed anti-Soviet demonstrations.

Alexander's brother went to live in Tel Aviv in 1977. There are only two Jewish families left now in Kharkov. Almost 30 families were released between January and June of 1978. In August 1978, he was told his family would not be able to leave until 1981. Now, that is in doubt because he has been threatened with prosecution by the Soviet authorities.

Certainly it would be in the spirit of the Helsinki Conference for the Soviets to review this case. I urge my colleagues to be continually aware of human rights

has erupted into violence. Reports indicate that Vietnamese forces have crossed the border along a 12-mile stretch, and have engaged Thai forces with heavy casualties. They have also overrun encampments of Cambodian refugees, reportedly with numerous casualties there as well.

If any further evidence were needed of the hollowness of the Vietnamese "concern" for the Cambodian people, this attack surely provides it. The hundreds of thousands of Cambodians who have been forced to flee their homes in Cambodia because of violence, disease, starvation, and hatred of the Vietnamese invaders are now innocent pawns of the Vietnamese in their attempt to punish the Thais and the U.N. agencies for their supposed aid and comfort to the enemies of Vietnam. They have been caught in the crossfire of a conflict which is not of their own making, and in which they want no part.

And for the Thais, who have provided a sanctuary for those Cambodians who have been forced to flee Vietnamese-controlled Cambodia, the Vietnamese invasion poses a serious threat. The Thais have not sought a border confrontation, but it has now been thrust upon them, and her friends now have an obligation to insure that Thailand's humanitarian response to the refugee problem does not threaten to embroil her in a conflict which she has tried to avoid.

Mr. President, these events impose important obligations on the United States and the rest of the international community. Last January, after returning from a visit to the Thai-Cambodian border, I proposed that the Congress call upon the President to press the United Nations to establish an international presence in the refugee encampments along that border. Senator HAYAKAWA and I sponsored a resolution, which was approved by both Houses of Congress, urging that U.N. personnel be provided in order to promote security and stability in the refugee camps, and to make clear to all parties that U.N. assistance was being provided solely for humanitarian purposes. Regrettably, the U.N. has not seen fit to act on this proposal, which was first put forward by the Thais almost a year ago.

In light of the most recent developments, a stronger response is now necessary. I call upon the President and the Secretary of State to press the United Nations, in the strongest possible terms, to take immediate action to stabilize the Thai-Cambodian border region. I would urge the U.N. to establish a peace-keeping force—preferably U.N. troops but at a minimum international observers—to maintain order and to protect the lives of innocent and unarmed Cambodian refugees who for all practical purposes have become stateless persons, barred from their own country by an invading force. And I call upon the Russians, whose economic and military aid enables Vietnam to continue its occupation of Cambodia, to use whatever leverage they possess, to restrain the use of force by the Vietnamese, in the name of basic humanitarian decency.

Finally, I hope our Government will make clear its intention to provide assistance to Thailand in defending its territory. The increased level of foreign military sales credits which both the House and Senate have now endorsed is symbolic of our desire to provide needed support, and I hope the President will expedite delivery of military equipment and take any other steps which may prove necessary.

Mr. President, it is a sobering reality that the Cambodian tragedy of the last 10 years shows little sign of coming to an end. So long as the Cambodian people continue to suffer, we must be prepared to shoulder our share of the burden of helping to keep that once-great nation and its people alive.●

EXPORT TRADING COMPANIES

● Mr. DURKIN. Mr. President, I am pleased to join Senator STEVENSON and several other of my Senate colleagues in cosponsoring S. 2718, a bill to help expand export opportunities for our small- and medium-sized businesses by facilitating the formation and operation of export trading companies.

By encouraging the formation of export trading companies, this bill represents an important step in addressing our balance-of-trade problem, and it also represents a major stride toward rectifying the longstanding export disadvantages faced by our small- and medium-sized businesses. Of the 250,000 to 300,000 manufacturing firms in the United States, only 10 percent are involved in export activity. Moreover, less than 1 percent of all American manufacturing concerns account for about 85 percent of all U.S. exports. To my State of New Hampshire, as well as for every State in the Union, this amounts to an enormous untapped potential. Presently this potential is languishing beneath outdated regulations barring any cooperation between businesses and banks, an unfair tax system which discourages foreign trade, ambiguous antitrust provisions and standards, prohibitive economies of scale in entering foreign markets, and general lack of experience and expertise in dealing with international markets.

In the United States, only the largest firms have been able to overcome these obstacles, leaving most other businesses confined to the domestic market. In countries such as Germany and Japan, however, firms of all sizes are able to claim a full share of the international market, in large part, through government-supported export trading companies. Such companies provide the promotional activities, market research, statistical intelligence, operational expertise and trade financing that small- and medium-sized companies cannot manage alone.

The bill I am cosponsoring today would cut through layers of tax, regulatory, and structural disincentives to export activity in the United States. And it would provide American businesses with the same conditions and opportunities enjoyed by their counterparts in Japan, Germany, and many other countries.

Firm action is clearly overdue on the part of both the private sector and the Government to improve the export performance of American industry, small medium, and large. The United States has incurred a trade deficit in each year since 1975. Outrageous increases in the price of OPEC oil have been the major, but not sole, cause of the string of negative outcomes on our balance of trade tally sheet. However, Americans must also recognize that the growth rate of American exports has decreased markedly in recent years. Recordbreaking inflation, reductions in industrial and technological research and development, and lackluster and even negative productivity have all contributed to the gradual deterioration of our export performance, as well as our runaway inflation. Aggressive operations by foreign business concerns have also succeeded in discouraging competition from firms in the United States. The distressing result has been 5-successive years of deficits. Simply stated, that must end. The United States must immediately begin to explore every avenue to reverse this trend.

Mr. President, after 5 years of trade deficits, this legislation means an improved balance of trade. At a time of increasing competitive difficulties for our small- and medium-sized businesses, it means expanded markets. At a time of shrinking GNP, it means increased economic growth. At a time of burgeoning unemployment, it means the promise of jobs. The engine for this change is simply to free our own businesses to compete with foreign businesses on equal terms.

I strongly urge my colleagues in the Senate to support this bill.●

DEEP SEABED HARD MINERAL RESOURCES ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 865.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2759) to establish an interim procedure for the orderly development of hard mineral resources in the deep seabed, pending adoption of an international regime relating thereto, and for other purposes.

The Senate proceeded to consider the bill.

UP AMENDMENT NO. 1286

(Purpose: To make certain technical and other amendments)

Mr. MATSUNAGA. Mr. President, I send a series of amendments to the desk and ask unanimous consent they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from Hawaii (Mr. MATSUNAGA) proposes an unprinted amendment numbered 1286.

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that further

AMENDMENT NO. 1906

At the request of Mr. PRESSLER, the Senator from Michigan (Mr. RIEGLE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. MELCHER), the Senator from Utah (Mr. HATCH), and the Senator from Virginia (Mr. WARNER) were added as cosponsors of amendment No. 1906 intended to be proposed to S. 1188, a bill to improve and modernize the vocational rehabilitation program provided service-disabled veterans under chapter 31 of title 38, United States Code, and for other purposes.

AMENDMENT NO. 1964

At the request of Mr. CRANSTON, the Senator from Maine (Mr. COHEN) was added as a cosponsor of amendment No. 1964 intended to be proposed to S. 2708, an original bill to extend title VII of the Comprehensive Employment and Training Act relating to private sector opportunities for the economically disadvantaged, and for other purposes.

SENATE RESOLUTION 506—SUBMISSION OF A RESOLUTION WITH RESPECT TO REPATRIATION TO CUBA OF CERTAIN CUBAN REFUGEES

Mr. DOLE submitted the following resolution, which was referred to the Committee on the Judiciary:

S. RES. 506

Whereas the recent flood of Cuban entrants into the United States as political refugees was not adequately screened to prevent the entry of a number of undesirables;

Whereas the result has been the disruption of communities in various parts of the United States;

Whereas the most recent disturbance has been the threat posed to the safety of the traveling public, whose lives are put in jeopardy by the numerous skyjacking attempts committed by Cuban refugees who have recently entered the United States;

Whereas there appears to be no administrative policy by officials of the Department of State or of the Immigration and Naturalization Service to resolve the difficulties posed by Cuban refugees who have recently entered the United States and who have caused disruption or disturbances or who do not wish to remain in the United States;

Whereas it is incumbent upon the Congress to oversee the conduct of the immigration policy of the United States and to insure the safety of United States citizens: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United States Government should formulate and implement a plan for the repatriation to Cuba of—

(1) Cuban refugees who have recently and improperly entered the United States and who are causing disruption or disturbances in the United States; and

(2) Cuban refugees who have recently entered the United States and who wish to return to Cuba for their own reasons.

SEC. 2. It is the sense of the Senate that an appropriate official of the administration should prepare and transmit to the Senate not later than 30 days after the date of adoption of this resolution a report setting forth the progress made in formulating and implementing the plan called for in section 1 of this resolution, together with any recommendations concerning legislation needed to carry out such plan.

SEC. 3. The Secretary of the Senate shall transmit a copy of this resolution to the President.

CUBAN REFUGEES AND THE SKYJACKING DANGER

Mr. DOLE. Mr. President, last week's wave of skyjacking by Cuban refugees trying to force their way back to Cuba dramatizes the failure of the United States to come up with a workable national refugee policy. From the very beginning of this vast outpouring from Cuba, the United States has failed to adequately respond to the crisis, seemingly allowing Fidel Castro's propaganda statements to dictate our official reaction, while the demands of refugee groups themselves determine our immigration policies.

RESOLUTION INTRODUCED

The recent deluge of skyjacking attempts by disgruntled Cuban refugees, however, represents the greatest failure of our efforts to deal with this new influx and the problem they present our citizens. We must devise a comprehensive policy to deal with the refugees, and to remove the skyjacking danger to American citizens. Accordingly, the Senator from Kansas is introducing a resolution expressing the sense of the Senate that the administration should immediately formulate and implement a plan for the repatriation to Cuba of those undesirable Cubans now in the United States whose entry and subsequent activity was improper, and those others who also wish to return for their own reasons.

This should be a matter of the highest priority to those designated officials charged with responsibility for immigration and refugee policy, and to the President and the Secretary of State. Reflecting this urgency, this resolution requests that a progress report be sent to the Senate within 30 days with a request for whatever legislation may be required to implement such a repatriation plan. If no new legislation is required, then whatever Executive actions have been undertaken or are planned to remedy this serious problem confronting the public should be made known to the Congress. The United States must deal quickly with this menace of growing proportions to our society.

PRESENT POLICY CIRCUMVENTS IMMIGRATION LAWS

President Carter's decision to let over 100,000 Cubans enter the country—not as individual refugees but en masse as applicants for asylum—has had unfortunate consequences which would probably have been avoided if normal immigration procedures had been adhered to. An unknown number of undesirables entered the country, including criminals and the severely mentally ill. As Arturo Cobo, coordinator for volunteers at the Key West Cuban refugee center, said, "Fidel has made a fool of us once again by sending prisoners and not families (of Cubans already settled here)." "Castro is not even trying to disguise these prisoners. They get off the boats with the same pants and shoes and the obvious haircuts that they had in prison," according to Assistant U.S. Attorney Eric Fisher.

Now we have criminals, malcontents, and those unwilling to work rebelling at the restrictions of our society, rioting and rampaging in the processing centers and, once out, hijacking airliners with hundreds of innocent American citizens aboard, trying to force their way back into Cuba. It is this administration's lack of foresight and planning, having made the decision to let the Cubans enter as a huge group with only perfunctory screening, and the subsequent failure to come forward with a consistent refugee policy, that has brought us to the present dilemma.

OUR FIRST PRIORITY

It should be this administration's first priority to immediately devise a plan to weed out the criminal element from the recent flood from Cuba, and to send them and all others who decide to go, back to their homeland. For over 5 months, such a plan has been necessary but not forthcoming. The United States and Cuba maintain interest sections in each other's capitals. The avenues for diplomatic negotiation are present and open. There are various diplomatic and economic pressures the United States can bring to bear on Cuba, forcing Castro to negotiate if he should be recalcitrant. It is certainly intolerable that our citizens must fear for their safety every time they embark on an airline flight.

Rather than the worthy but stopgap measures of putting sky marshals back on airplanes and having airline personnel doing personality profiles on all their customers, the administration should be addressing the root of the problem. It is with this goal in mind that the Senator from Kansas is introducing the following Senate resolution strenuously urging the President and the Secretary of State to give this problem their immediate attention. This is not a job to be left solely to the standard procedures of the bureaucracy, but an urgent task for those capable of cutting through redtape and devising a comprehensive and consistent refugee and immigration policy.

AMENDMENTS SUBMITTED FOR PRINTING

TONNAGE MEASUREMENT SIMPLIFICATION ACT—H.R. 1197

AMENDMENTS NOS. 2254 THROUGH 2271

(Ordered to be printed and to lie on the table.)

Mr. MELCHER submitted 18 amendments intended to be proposed by him to Amendment No. 1973 proposed to H.R. 1197, an act to simplify the tonnage measurement of certain vessels.

AMENDMENT NO. 2272

(Ordered to be printed and to lie on the table.)

Mr. PERCY submitted an amendment intended to be proposed by him to an amendment to H.R. 1197, supra.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS AND TRADE SERVICES—S. 2718

AMENDMENT NO. 2273

(Ordered to be printed and to lie on the table.)

Mr. STEVENSON submitted an amendment intended to be proposed by him to S. 2173, a bill to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

● Mr. STEVENSON. Mr. President, I offer an amendment to S. 2718, the Export Trading Company bill, at the suggestion of Representative BILL ALEXANDER and Senator PACKWOOD.

This amendment extends the definitions of an export trading company and an association under the Webb-Pomerene Act to not-for-profit organizations. This will permit local and State nonprofit trade centers to participate in export development activities through the trading company structure. There is at least one such center located in Arkansas. As the job-producing benefits of export development become more evident, other such entities will undoubtedly be established. This should be of particular help to small and medium-size businesses which do not now sell goods abroad.

The amendment also insures that minority businesses will participate in export development by making them eligible for EDA and SBA loans and guarantees extended to export trading companies.●

ADDITIONAL STATEMENTS

THE DISABLED VETERANS REHABILITATION ACT

● Mr. PRESSLER. Mr. President, on Wednesday, August 6, Senator CRANSTON, chairman of the Senate Veterans' Affairs Committee, inserted in the CONGRESSIONAL RECORD, a statement in opposition to the Career Development, Advancement and Training Amendment which Senators HEINZ, DOLE, CHAFEE, HATFIELD, HATCH, MCGOVERN, REIGLE, WARNER and I intend to offer to S. 1188, the Disabled Veterans Rehabilitation Act when it comes to the floor of the Senate. I would like to take this opportunity to address the points raised in Senator CRANSTON's statement, since much of it was based upon invalid and distorted assumptions about the Career, Development, Advancement and Training Amendment No. 1906, its effects and its potential for abuse.

First, however, I would like to remind my colleagues that this will be the last and most important vote the Senate will take on the Vietnam veterans readjustment program. Vietnam veterans unemployment now stands at 581,000, double the rate of only a year ago and an increase of 100,000 in only 2 months. The percent of Vietnam era veterans aged 25 to 39 unemployed is 7.1 percent compared to 6.5 percent for nonveterans of the same age group. The recession has wiped out most employment, readjustment, and rehabilitation gains made over the past few years. The vast majority of these unemployed veterans, most of whom were discharged more than 10 years ago, are now without access to their GI bill readjustment benefits or any meaningful and relevant employment and training program. Unless we provide effective, relevant employment opportunities and assistance, we will consign these disabled and Vietnam theater veterans to perpetual cyclical unemployment and chronic underemployment. Had it not been for their service to and sacrifice for their country in Vietnam, many of these unemployed veterans would have the seniority and the skills to retain employment in our present troubled economy.

There is no group in this Nation that the Government has a greater obligation to than the disabled and Vietnam combat veteran. And there is no other group that has been treated more poorly in recent years than the disabled and Vietnam theater veteran.

In his testimony before the House Veterans' Affairs Committee, Stephen L. Edmiston, of the Disabled American Veterans stated:

> Mr. Chairman, as you know, veterans are the only group identified in law to receive priority services through the Employment Security System. Despite that, development and implementation of public policy over the years has relegated the veteran to second class citizen. Current and past Administrations have placed more emphasis on the needs of other disadvantaged groups than on those who, in time of national need, served this country. It is our opinion that Vietnam veterans continue to suffer a disproportionate share of the high rate of unemployment in our nation today. Several factors contribute to the staggering unemployment of Vietnam era veterans. They include the lack of training and education, poor program design, and a total lack of commitment to enforce existing laws and regulations.

It is in this perspective we should view the career development, advancement and training program. Career development is not just one more of the many token, and largely symbolic social welfare programs that have characterized employment efforts for Vietnam veterans, but rather it is the last opportunity for meaningful and productive rehabilitation and employment for the most needy and deserving disabled and Vietnam theater veterans.

In his statement, Senator CRANSTON stated:

> Mr. President, amendment No. 1906 would establish a "career development, advancement, and training program" for certain disabled and Vietnam-threatre veterans. The amendment would provide financial incentives—essentially what amounts to wage subsidies—to employer to hire, train, or promote certain veterans.

I would like my colleagues to note, Mr. President, that the Disabled Veterans Rehabilitation Act, S. 1188, contains an employer incentive for disabled veterans similar to the one provided in the career development program. The concept of employer subsidies is one recognized and advocated by the Veterans' Administration in its testimony before the House Veterans' Affairs Committee in 1979:

> A very significant factor in the low usage rates for job training programs has been employer resistance. The typical employer, when asked to participate in the VA's job training program is inclined to ask, "What's in it for me?" Although our outreach personnel can point out the advantages to the employer, such as maturity and reliability of the veterans, the lack of tangible benefits to the employer has been a major deterrent to greater use of the job training program.
>
> To counteract this tendency on the part of employers, we recommend that in the case of vocational rehabilitation trainees, consideration be given to providing a direct financial incentive in individual instances to the employer-trainer in the form of a subsidy. This subsidy would help cover the cost of training.

This is exactly what the career development, advancement, and training program does. It provides a direct financial incentive in individual instances to the employer/trainer in the form of a subsidy. The subsidy would help cover the cost of training. It is structured and modeled after the VA OJT program: most of the legislative language is derived from the laws governing VA OJT programs.

The CONGRESSIONAL RECORD of December 19, 1979, contains an updated history of the career development, advancement, and training program and its relationship to existing employment and training initiatives.

Senator CRANSTON further states with regard to abuse:

> I believe, Mr. President, that it is most important to stress that the program proposed by the Senators is in reality a wage-subsidy type program. The proposal does provide for some rather standard safeguards to curb misuse, but the vast potential for ripoffs and abuses still is inherent in its structure. Historically, wage subsidy programs, unless very tightly structured and monitored—through a process which involves enormous amounts of redtape. Federal regulations, investigations, and Government intervention creating its own administrative monstrosity—result in situations where there is substitution, dead end jobs, and exploitation of those who are intended to be helped by such programs.

The career development, advancement, and training program would not be subject to significant abuse. It is structured upon existing laws and regulations to preclude abuse and to insure ease of implementation.

Apart from some specific technical points and areas where legislative clarifications may be required, neither Senator CRANSTON, nor the VA is able to substantiate a case for abuse of taxpayers dollars. The career development, advancement, and training program's approval and safeguard provisions are drawn almost entirely from existing VA OJT programs, approval and benefit payments. In fact, they are tighter than existing laws. If Senator CRANSTON seriously believes the contention that the provision of career development would be "ripe for abuse" then existing VA OJT laws and the laws governing CETA and the targeted tax credit, all of which Senator CRANSTON helped create, are "ripe for abuse."

No payments are authorized to be made under the career development program until the veteran has been in his or her job and/or training for 90 days. Payment than can be made only for employment and training completed and only after both the veteran and employer signs separate certificates that

"(A) is the natural son or daughter of a veteran who served for ninety days or more during the Vietnam era and during such service was exposed to phenoxy herbicides contaminated by dioxins, as determined in accordance with regulations prescribed by the Administrator under paragraph (3)(C) of this subsection; and

"(B) is suffering from a birth defect that in an adult is disabling to a degree of 10 per centum or more and that has been determined by the Administrator under paragraph (3)(B) of this subsection to be a birth defect that may be caused by exposure of one of the parents of a child to phenoxy herbicides contaminated by dioxins;

such person shall be deemed for the purpose of this chapter to be a veteran of a period of war and such birth defect shall be deemed for the purposes of this chapter to be an aggravation of a preexisting injury suffered in line of duty in the active military, naval, or air service during a period of war.

"(3)(A) The Administrator shall determine, and shall promulgate by regulation, what diseases medical research has shown may be due to exposure to phenoxy herbicides contaminated by dioxins. The Administrator shall include in such regulations a specification of the standards used by the Administrator in making such determination.

"(B) The Administrator shall determine, and shall promulgate by regulation, what birth defects, if any, may be mutagenic birth defects resulting from exposure of the parent of a child to phenoxy herbicides contaminated by dioxins. The Administrator shall include in such regulations a specification of the standards used by the Administrator in making such determination.

"(C) The Administrator shall promulgate by regulation the conditions of service during the Vietnam era required to establish exposure of a veteran to phenoxy herbicides contaminated by dioxins for the purposes of paragraphs (1) and (2) of this subsection. Such regulations may not require that a veteran be required to provide any information to the Veterans' Administration for the purpose of determining such exposure beyond the information contained in the veteran's discharge papers and shall establish a presumption of exposure of a veteran to phenoxy herbicides contaminated by dioxins when Department of Defense records, information supplied by the veteran, and other information establish a possibility of such exposure. The Administrator shall include in such regulations a specification of the standards used by the Administrator in establishing what conditions of service are required to establish such exposure to phenoxy herbicides contaminated by dioxins.

"(4)(A) The President shall appoint an advisory board composed of five veterans, at least three of whom shall be veterans of the Vietnam era who served in the Vietnam theatre of operations during such era, to advise and consult with the Administrator on regulations to be promulgated under paragraph (3).

"(B) The Administrator shall consult with and seek the advice of the advisory board appointed by the President under subparagraph (A) regarding all matters to be included in such regulations.

"(5) Notwithstanding any other provision of law, section 553 of title 5, relating to agency rulemaking, shall apply to the promulgation of regulations under paragraph (3) of this subsection, and such regulations shall be made on the record after opportunity for an agency hearing in accordance with sections 555 and 557 of such title. Such regulations shall be subject to judicial review in accordance with chapter 7 of such title.

"(6) The Administrator shall complete final agency action on the regulations required to be promulgated by paragraph (3) of this subsection not later than twenty-four months after the date of the approval of the protocol for the epidemiological study required to be conducted by section 307 of the Veterans Health Programs Extension and Improvement Act of 1979 (Public Law 96-151; 93 Stat. 1097).".

On page 74, line 22, strike out "308" and insert in lieu thereof "309".●

NATIONAL SMALL HYDROELECTRIC POWER DEVELOPMENT ACT OF 1980—S. 1641

AMENDMENT NO. 2275

(Ordered to be printed and to lie on the table.)

Mr. SCHMITT (for himself, Mr. SIMPSON and Mr. SCHWEIKER) submitted an amendment intended to be proposed by them, jointly, to S. 1641, a bill authorizing the Secretary of the Army, acting through the Chief of Engineers, to plan, design, and construct small hydroelectric power projects not specifically authorized by the Congress.

● Mr. SCHMITT. Mr. President, today I am submitting an amendment to S. 1641, the National Small Hydroelectric Power Development Act of 1980, cosponsored by my distinguished colleagues, the Senator from Pennsylvania (Mr. SCHWEIKER) and the Senator from Wyoming (Mr. SIMPSON).

S. 1641 authorizes the Corps of Engineers, the Water Power Resources Service and the Soil Conservation Service to carry out the planning, design and construction of hydroelectric dams, as well as projects for water supply and renovation, desalinization and dam safety.

It is our strong feeling that the Federal Government should not have to expand its workforce in order to carry out the mandates of S. 1641. Instead, this work shoud be contracted out not only to hold down the size of the Federal Government but to further stimulate the economy. In accordance with these views, our amendment will require the agencies involved to contract out when doing the work in-house would require the addition of new personnel. Provision is made for those instances where no qualified contractor is available and provisions are made for some administrative staff.

Mr. President, I ask unanimous consent that the text of this amendment be printed in the RECORD at this point.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 2275

On page 17, immediately below line 11, insert the following:

TITLE III

SEC. 301. Each head of a Federal water resources agency shall undertake a study, design plan, or construction authorized or required under this Act without hiring additional employees for such purpose, except that a head of such agency may hire additional employees for such purpose if, before hiring such employees, he prepares and transmits to the Chairman of the Committee on Public Works and Transportation of the House of Representatives and the Chairman of the Committee on the Environment and Public Works of the Senate a report setting forth his determination that under the Office of Management and Budget Circular A-75 of March 3, 1966, as revised, the respective agency was justified in not contracting in the private sector for the undertaking of such study, plan, or construction work.●

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS AND TRADE SERVICES—S. 2718

AMENDMENT NO. 2276

(Ordered to be printed and to lie on the table.)

Mr. PROXMIRE (for himself, Mr. TOWER, Mr. KENNEDY, and Mr. METZENBAUM) submitted an amendment intended to be proposed by them, jointly, to S. 2718, a bill to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

Mr. PROXMIRE. Mr. President, Senator KENNEDY, Senator METZENBAUM, Senator TOWER, and I today introduce this amendment to the Export Trading Company Act of 1980 pending on the Senate Calendar (No. 785). The amendment which we offer was drafted by the Federal Reserve Board. It carries the approval of that agency. We offer the amendment as a compromise to the export trading company legislation which is now pending and stalled on the Senate floor because of the grave reservations that many bankers have over the consequences of the legislation for the banking system, the grave reservations that the bank regulatory agencies chiefly responsible for the safety and soundness of our banking system have over the legislation and the grave reservations that the small independent businessmen have over the legislation.

Mr. President, the Export Trading Company Act of 1980 without this amendment would permit banks and bank holding companies to control export trading companies that could be permitted to engage in every conceivable line of commerce and industry. A bank controlled export trading company could engage in manufacturing, in retailing and merchandising, could be engaged in the securities business contrary to the proscriptions of the Glass-Steagall Act, in activities not "closely related" to banking contrary to the Bank Holding Company Act, and in activities not "incidental" to banking contrary to the National Banking Act. The export trading company would be principally engaged in export-import transactions whose range would be enormous.

Such an export trading company could purchase commodities in the market for its own inventory for later resale overseas; could contract to build an oil refinery or textile mill in a foreign country, provide construction, architectural, legal and insurance services; engage in international barter transactions and engage in the marketing of the bartered products in the domestic market.

Mr. President, the Export Trading Company Act of 1980 would destroy the historic separation between banking and commerce that has for good reason existed in this Nation for over 100 years without any demonstrable showing that the Nation would thereby benefit from a favorable balance of trade. Indeed, that case cannot be made. Banks have

no expertise whatsoever to offer in the kinds of activities that I have described.

Banks are financial intermediaries. History teaches us that when they stray from their financial role in our society the public suffers the consequences in speculation and failure and bailouts.

Both the Federal Reserve and the Federal Deposit Insurance Corporation oppose the Export Trading Company Act of 1980 as presently drafted. These are the bank regulatory agencies responsible for insuring the safety and soundness of the Nation's financial system. The Federal Reserve and the FDIC find the provision permitting banks and bank holding companies to "control" export trading companies to be the most objectionable feature of the legislation.

"Control" of a commercial enterprise gives the bank an economic stake in the success of the enterprise. When a bank has an economic stake in a commercial enterprise its judgments become colored. That is what happened to the large banks pushing this legislation when they became involved in the REIT debacle and suffered huge losses and ultimately had to be bailed out by Congress. Export Trading Companies are by their very nature highly leveraged business ventures. Profits can be high. But banks need to be insulated from the lure of high profit risks lest their credit judgment be skewed and the bank be committed to place its full resources at the disposal of such a "controlled" enterprise when trouble ensues and losses are taken. Even in the absence of losses, bank "control" of such an enterprise runs a high risk that bank owned companies or manufacturers dealing with bank owned companies will have more favorable access to bank credit than other companies.

Do we really believe that a bank that has a direct ownership interest in a high risk company will exercise the same objective credit judgment it exercises with arm's-length customers? No way. So what happens to the bank's fiduciary responsibility to its depositors and its stockholders?

Mr. President, in an effort to be constructive, we offer a compromise solution that will meet the principal objections to the Export Trading Company Act of 1980 now pending on the Senate floor.

The amendment which we offer will permit banks and bank holding companies to take noncontrolling positions in export trading companies engaged in export trade—not the myraid of activities permitted in the current pending legislation—and would permit bank holding companies to take a controlling position in an export trading company engaged in export trade in special circumstances where the export benefits are demonstrable and while the risks are minimized.

This compromise amendment would permit banks and bank holding companies to invest up to $10 million in an export trading company without prior approval and over $10 million with the prior approval of the appropriate bank regulatory agency up to a limit of 5 percent of its capital and surplus. Such investments would be limited to under 20 percent or a noncontrolling interest in the export trading company. In my judgment, such authority would give banks the opportunity to become involved in export trade utilizing their expertise as financiers in domestic and foreign markets while guarding against the risks outlined by the Federal Reserve Board and the Federal Deposit Insurance Corporation.

This compromise amendment would permit a bank holding company to acquire 100 percent of the equity stock or control of an export trading company if such control is clearly necessary in order for the export trading company to export or facilitate the export of goods or services.

Mr. President, this amendment seeks the middle ground between the fears of those that are concerned over bank expansion into unchartered waters with grave risks and those who feel that bank involvement in export trade can play a significant role in alleviating our balance-of-payments problems. The great virtue of this compromise amendment is that it is not irreversible. If the economic facts in due course reveal that bank involvement in the ownership and control of export trading companies is warranted I shall be the first to propose such legislation.

Mr. President, I hope my colleagues in the Senate will give this compromise amendment their very serious consideration. It seems to me that if we are to see legislation passed into law this year we must develop a consensus on the issue in the Senate.

I ask unanimous consent that the text of my amendment be printed in the RECORD following my remarks, along with the accompanying transmittal letter from Chairman Volcker of the Federal Reserve.

There being no objection, the amendment and letter were ordered to be printed in the RECORD, as follows:

AMENDMENT No. 2276

Strike lines 19 to 25 on page 9; strike pages 10 through 15; and strike lines 1 through 9 on page 16; and insert in lieu thereof the following:

"(b) Not with standing any prohibition, restriction, limitation, condition or requirement of any other law, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidence of ownership of one or more export trading companies. A banking organization may:

(1) invest directly or indirectly up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency;

(2) invest directly or indirectly in excess of an aggregate amount of $10,000,000 in one or more export trading companies only with the prior approval of the appropriate Federal banking agency.

Any banking organization which makes an investment under authority of (1) above shall promptly notify the appropriate Federal banking agency of such investment and shall file reports on such investment as such agency may require.

(c) The following limitation apply to export trading companies whose shares are held by one or more banking organizations and to the banking organizations holding such shares:

(1) except as provided in subsection (d), no banking organization may acquire 20 per centum or more of the voting stock or otherwise control an export trading company;

(2) except as provided in subsection (d), no banking organization may acquire voting stock of an export trading company if such acquisition would result in 50 per centum or more of the voting stock of the export trading company being owned by banking organizations;

(3) neither an export trading company nor a banking organization that owns its shares shall make any representation that the export trading company and the banking organization are affiliated. For this purpose, the name of such export trading company shall not be similar in any respect to that of a banking organization that owns its shares;

(4) the total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of credit by the banking organization and its direct and indirect subsidiaries shall not exceed 10 per centum of the banking organization's capital and surplus;

(5) a banking organization that owns any voting stock of an export trading company shall divest such stock if the export trading company takes a position in commodities or commodities contracts other than as may be necessary in the course of its export business;

(6) no banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable that those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(d)(1) With the prior approval of the Board of Governors a bank holding company may acquire 20 per centum or more or otherwise control an export trading company;

(2) With the prior approval of the Board of Governors, a bank holding company may acquire voting stock of an export trading company if such acquisition would result in 50 per centum or more of the voting stock of the export trading company being owned by banking organizations;

(3) The Board of Governors shall not approve an application under this subsection unless it determines on the basis of the record that:

(i) the export trading company will limit its activities to exporting or facilitating the exportation of specific goods or services which would not be exported to any significant extent without the involvement of an export trading company;

(ii) investment by a bank holding company in excess of the limitations in subsection (c) is clearly necessary in order for the export trading company to export or facilitate the export of goods or services;

(iii) the export trading company will limit its activities to a level consistent with the need for minimizing the financial risk of the investing bank holding company and maintaining a separation between banking and commerce, as determined by the Board.

(4) The Board, upon receiving an application under this subsection, shall provide a copy to the appropriate Federal banking agency of the subsidiary banks of the bank holding company and shall request the comments of that agency.

(e)(1) In the case of every application under this section, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of

the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial and agricultural concerns, and to improving the competitiveness of United States exports in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under this section unless it finds that there are significant export benefits and that such benefits clearly outweigh in the public interest any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(2) In approving any application submitted under this section the appropriate Federal banking agency may impose such conditions which in the circumstances of the application it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices.

(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal banking agency must give due consideration to the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company and the identity and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions which unnecessarily disadvantage, restrict or limit export trading companies in competing in world markets or in achieving the purposes of section 102 of this Act.

On page 17, line 19 "(e)(1)" should be changed to "(f)(1)" and on page 18, line 12 "(f)(1)" should be changed to "(g)(1)".

FEDERAL RESERVE SYSTEM,
Washington, D.C., August 20, 1980.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN PROXMIRE: I am responding to your letter requesting a draft amendment to S. 2718, the Export Trading Company Act of 1980, to permit bank holding companies under special circumstances to have a controlling interest in export trading companies while maintaining a general policy that banking organizations should not ordinarily be permitted to control export trading companies.

The principal difference between the bill reported by the Senate Banking Committee and the recommendations contained in my letter of May 12 is that the bill permits U.S. banks to acquire controlling interests in export trading companies. The issue of control is of course an important one. The recommendations in my letter of May 12 would help keep risks to banks at manageable levels provided that the banks had noncontrolling investments. It continues to be my view that banking organizations should not generally be permitted to control export trading companies in view of the implicit commitments of bank resources, the increased financial risk that accompany control and the need to maintain the line between banking and commerce.

The issue of permitting banks to extend their area of operations arises, as you know, in many contexts other than export trading companies. Control often carries an implicit commitment by a bank to place the full resources of the institution behind its subsidiary. In many institutions this is a matter of corporate policy, and it is recognized in the market place. As your Committee report notes, a banking organization is more likely to become involved in the management and operation of an export trading company if it has a controlling interest in that company. Although a bank may judge that it can operate an international commercial banking business more efficiently and safely through controlling investments in affiliates, control and the involvement in management in a nonbanking business would increase the potential financial risk to the owning banks, and might also increase the likelihood of conflicts of interest. This consideration lies behind the recommendation that as a norm bank ownership interest be limited to less than 20 percent.

The Export Trading Company Act seeks to limit these risks by providing that controlling investments by banks be subject to prior approval and to certain statutory safeguards. My concern about the provisions of S. 2718 that are designed to give supervisors powers to step in and prevent unsafe practices is that it would involve the supervisors to a substantial degree in decisions regarding operations of export trading companies. Bank supervisors are not able to anticipate all future eventualities in acting on applications and are unlikely to be able to supervise the operations of export trading companies sufficiently closely to ensure that risks to banks could be avoided, when those risks are magnified by bank control and involvement in management.

Finally, I should note that the sort of detailed supervision of export trading company operations that might be necessary under S. 2718 would be contrary to the philosophy adopted by the Board in its recent amendments of Regulation K, which sought to reduce the need for detailed supervisory review and regulation of international bank operations.

The control issue goes to the heart of concerns that have been long standing in legislation and policy. Apart from its significance in this case, it also would be an important precedent in other areas. Consequently, I continue to feel that legislation in this area should be consistent with the basic presumption that a line be maintained between banking and commerce. In my personal opinion, that concept could perhaps reasonably be bent to recognize some special circumstances that might arise in which limited purpose (and presumably limited in size) export trading companies might be permitted, upon application to bank regulators, to be controlled by a bank. That would accommodate situations where an ETC designed for certain specialized purposes (i.e., for particular projects or rather specialized trade and financing problems) might not be established without the possibility of strong bank sponsorship.

I do not conceive of such an "exemption" from the basic presumption against control being extended to large, general or multiple purpose, export trading companies that would be capable of standing on their own feet without bank sponsorship—able to attract and retain necessary management and expertise and, indeed, ready to do business with competing banks.

However, there may indeed be certain special circumstances in which the risks associated with bank control of an export trading company would be outweighed in the public interest by the salutary effect the trading company would have in promoting U.S. exports. This situation might exist when particular goods and services currently not being offered in international trade could be marketed by having access to the expertise of a bank assisted export trading company. Further, if the exposure of the trading company (and its bank holding company owner) is reasonable in relation to its activities, it may be in the public interest to permit control of the export trading company. The critical element in any case involving control is the need for bank involvement in the organization and continued operation of such an export trading company. This condition could be met when, for example, the limited size, specialized purpose or temporary nature of the proposed new export facility makes it unlikely that it could attract the financial management, expert resources and knowledge of foreign markets without the commitment implied by bank control. The export of many products requires a high degree of sophistication and specialized knowledge in the areas of marketing, documentary requirements, financing, etc. In order for a banking organization to control an export trading company, it must bring to the enterprise already existing expertise that is essential to the successful operation of the export trading company. I would expect further that the need for continued bank involvement would be demonstrable on an ongoing basis.

One issue which I have not addressed previously in the context of the control issue is whether, in those cases where the export trading company is to be controlled by a banking organization, it is preferable that ownership reside in the bank or in the bank holding company. This issue was discussed at the Committee's hearings several weeks ago. Limiting controlling interests to bank holding companies would be consistent with the general scheme of Federal banking laws which requires that nonbanking activities be performed by a corporate entity separate from the bank. Also, this approach would be more harmonious with concerns about breaching the line between banking and commerce.

There is an argument that all investments, including those below 20 percent of the export trading company's stock, should be restricted to bank holding companies. However, a good case can be made that passive minority investments of a purely financial nature and with reduced risk to the investor should be permitted for banks as well as bank holding companies.

The enclosed draft amendments to S. 2718 are consistent with the views expressed in the foregoing paragraphs. As a footnote, I would mention that there is no reference in the amendments to a procedure requiring sixty days notification before a bankin organization engages through an export trading company in "any line of activity, including specifically the taking of title to goods, wares, merchandise, or commodities, if such activity was not disclosed in any prior application for approval." The exclusion of this provision from the enclosed amendments does not reflect a lack of concern for expansion of export trading company activities without prior Federal banking agency notice or approval, but rather a belief that the Board and the other Federal banking agencies would be able to limit such expansion through their authority to impose conditions with respect to applications filed by banking organizations in investing $10,000,000 or more in an export trading company. In this way the appropriate Federal banking agency could determine on a case-by-case basis what type of expansion of activity would require prior notification or approval, and would avoid the problem of having to determine the statutory meaning of "line of activity."

By permitting bank control of export trading companies only where there is a clear need, I believe the purposes of S. 2718 can be accomplished. At the same time, the concerns I have expressed as to bank exposure would be mitigated by allowing the bank regulatory agencies to review critically any proposal in light of the risks involved. If S. 2718 were amended to permit bank holding company control in these limited circumstances, I would be prepared to support this legislation.

Sincerely,

PAUL A. VOLCKER.

AMENDMENT NO. 2277

(Ordered to be printed and to lie on the table.)

Mr. PROXMIRE (for himself, Mr. KENNEDY, and Mr. METZENBAUM) submitted an amendment intended to be proposed by them, jointly, to S. 2718, a bill to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

Mr. PROXMIRE. Mr. President, Senators KENNEDY and METZENBAUM and I are today submitting this amendment to the antitrust sections of the Export Administration Act of 1980.

An exemption from domestic antitrust laws has always been available to export trading companies or associations under the Webb-Pomerene Act. S. 2718 attempts to encourage and facilitate the use of this exemption by removing its administration from the antitrust enforcement agencies and transferring it to the Department of Commerce. In doing this, however, it creates a whole new set of complications and uncertainties. The Department of Commerce has no law enforcement functions or capabilities. Moreover, it has no expertise in dealing with antitrust issues.

Therefore, while the drafters of S. 2718 were able to give administration of the exemption to the Secretary of Commerce, they created a situation where the Attorney General was constantly lurking in the background. Not only is there potential for conflict between the two agencies, this potential creates a constant source of uncertainty for any export association or trading company throughout its existence.

The solution to this problem is quite simple. The Attorney General should have the ability to make the final determination on the antitrust immunity granted by the certification of the company or the association. Once he has made this determination, however, he should be bound by it and the company or association should be free from threat of antitrust action as long as it stays within the bounds of its certification. This freedom from antitrust attack should include private as well as Government action. All of this is accomplished by the proposed amendment. The amendment would both simplify the certification process and make the antitrust exemption far more meaningful. I ask unanimous consent that the text of this amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 2277

On page 26, line 19, delete subsection (c).

On page 31, line 10, delete "." and add "in which case the Secretary shall not issue the certification."

On page 31, lines 19 and 20, delete "After the forty-five day period or."

On page 34, line 10, delete subsection (e).

AMENDMENTS NOS. 2278 THROUGH 2280

(Ordered to be printed and to lie on the table.)

Mr. STEVENSON submitted three amendments intended to be proposed by him to S. 2718, supra.

NOTICE OF HEARINGS

COMMITTEE ON THE JUDICIARY

● Mr. METZENBAUM. Mr. President, the Judiciary Committee will hold a hearing on S. 2216, the Intelligence Identities Protection Act, on Wednesday, August 27, 1980. The hearing will begin at 11:30 a.m., in room 2228, of the Dirksen Senate Office Building.●

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON EUROPEAN AFFAIRS

Mr. ROBERT C. BYRD. I ask unanimous consent that the European Affairs Subcommittee of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Monday, August 25, 1980, to hear administration officials on NATO and Western security in the 1980's.

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMANENT INVESTIGATIONS SUBCOMMITTEE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the permanent Investigation Subcommittee of the Committee on Governmental Affairs be authorized to meet during the sessions of the Senate on Monday, August 25, 1980, Tuesday, August 26, 1980, and Wednesday, August 27, 1980, to hold oversight hearings on the Department of Labor's investigation on Teamster pension funds.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

HUSSON COLLEGE COMMENCEMENT ADDRESS BY DR. ROBERT E. L. STRIDER

● Mr. MITCHELL. Mr. President, Dr. Robert E. L. Strider, the former president of Maine's Colby College gave his first address since retirement at the commencement day ceremony at Husson College, Bangor.

Bob Strider's breadth of vision and his scholarship have rarely been better displayed than in the remarks he shared with the student body of Husson.

Husson College is a business education intitution, devoted to developing the management and leadership skills our Nation will need in the coming years. Bob Strider addresed to the students of the college, not merely the traditional commencement day verities, but a broadly drawn examination of the relevance and worth of practical business training to the discovery of the eternal human and social values. Bob Strider's address demonstrates that the goals of a traditional liberal arts education—to focus on order and truth—are inherent in good business training and shape the values of business students.

I am proud of the development of Husson College as a fine business education institution serving the State of Maine. And I want to share with my colleagues Bob Strider's address to that institution.

I ask that it be printed in the RECORD. The address follows:

COMMENCEMENT ADDRESS—HUSSON COLLEGE

(By Robert E. L. Strider)

It is an honor and a special pleasure to participate in this Commencement, an occasion of such importance in the life of a college. We are friends and neighbors, for Colby has had long-standing ties with this institution since Husson's assumption of its present name, and before. Colby and Husson have been partners in the enterprise of higher education here in Maine, along with the University, the other liberal arts colleges, the institutions like Husson that have specializations, and the most recent arrivals on the scene, the vocational institutes. All of us in this company have been cooperating, not competing, as we have tried to provide for young men and women in precarious and unpredictable times some reasonably sound foundation upon which to build in preparation for decades as yet unehatted. It is a privilege to be here to salute this community, your president Delmont Merrill, your chairman Malcolm Stevenson, your Board of Trustees, your faculty, and the members of this graduating class and their families and friends. My congratulations to you all and my good wishes.

I intend to talk about change, and about ways in which you have been preparing yourselves for change. The focus of my remarks has been affected by an event this past week in Cambridge that moved me deeply, the death of Howard Mumford Jones, one of Harvard's and America's great scholars and a dear friend of many years. I have been remembering an occasion in 1962 when Professor Jones gave the Commencement address at Colby. It was without a doubt one of the really memorable Commencement addresses at Colby in the considerable span of years that I spent there, and I well recall his title: "The Indestructible College." What colleges represent is indeed indestructible, at Colby or Husson or wherever. In my observations to you on this important day at Husson I would like to reinforce that conviction. And I would like this modest reaffirmation of mine to express homage to Howard Mumford Jones. With his quizzically raised eyebrow he is no doubt looking on, and and I hope he approves.

It is a truism that the world changes. It does so rapidly, and the year 2000 approaches at gathering speed. We used to gasp at the thought of 1984, and that meridian, whatever it stands for, is now less than half a decade away.

Has it occurred to you that some of you will have grandchildren who will live into the 22nd century? It is astonishing that only a few generations may span several centuries. My father often remarked upon his clear recollection of his own grandfather's great old-age, a gentleman who had been born in 1797 before the death of George Washington. Toward the end of only a third generation for some of you who hear these archaic words it will be past the year 2100.

And not only what speed, but what changes. Not just those that lie ahead for your as yet undreamed of grandchildren, but for you yourselves. That great-grandfather of mine to whom I have alluded experienced practically none of the wonders of modern science. Who knows what those grandchildren of yours who live past 2100 will use and buy and build and take for granted that none of us here can remotely imagine?

Among the implications of this rapid evolution is the likelihood that there will be a considerable degree of obsolescence in what you have been learning thus far during your lives and in your collegiate experience. One of the characteristics of your kind of institution is that you have concentrated more upon how to accomplish certain tasks than upon the more elusive questions as to why one should. The "why" may not change all that much over the centuries, but the "how"

handicapped, Head Start, health care, child welfare, tax policy, social security, or employment. The legislation we are considering today, the Domestic Violence Prevention and Services Act, S. 1843, addresses a problem which not only undermines the family structure, but exacts a tremendous social cost. It is a problem which for too long has been hidden from society, but which can no longer be neglected.

Domestic violence cuts across all socioeconomic lines and has been described as reaching "epidemic proportions." A 1977 national study of domestic violence, conducted by Dr. Murray Straus of the University of New Hampshire, found that of the couples surveyed 3.8 percent of the women were victims of one or more physical attacks by their husbands during the prior 12-month period. Nationwide this translates into 1.8 million abused wives.

In 1978, the Boston City Hospital reported that 70 percent of the assault victims examined in the emergency room were women who were abused in their homes.

A Maryland State Police survey reported that almost 90 percent of its 15,312 cases of spousal violence involved assaults or attempted assaults on women.

In Kansas City in 85 percent of all spousal homicides or aggravated assaults, the police were called to the home more than once, and in 50 percent of the homicide cases, they were called five or more times before the homicide occurred.

Violence in the home is a subject about which little has been done. Yet it is a pervasive problem which exists in all settings—urban as well as suburban. The victims of domestic violence suffer from a multitude of problems including legal, medical, economic, and psychological. In most instances abused women have no place to turn. They endure the situation believing that it will change or fearing the unknown if they leave and seek outside assistance. Many are economic prisoners, unable to support themselves or their children if they leave. And there is little support from the legal system.

The fact is that women who have been victimized at home have too often found themselves victimized again by a society which ignores their plight. Only recently have we become aware of the seriousness of the problem and that its victims need help.

At the same time, we must face the realization that violence in the home is rarely limited to one victim. It occurs not only between spouses, but includes children, infants and the elderly. A recent Connecticut study revealed that in 40 percent of the cases where mothers were being abused by father, these fathers were also beating the children of the household. And, many of the children of violent households become abusers of their own spouses and children, perhaps also of the very parents who once hurt them.

We live, unfortunately, in a violent society. Domestic violence is another manifestation of a society that has lost respect for the individual. The purpose of S. 1843 is to provide real help to the real victims of domestic violence. It will also provide help for the perpetrators of domestic violence to end the cycle of violence.

Mr. President, in 1977 I was a primary cosponsor of the first bill introduced in the Senate to address this issue. Representative BARBARA MIKULSKI was the chief sponsor of domestic violence legislation on the House side. Compassion and understanding has been the hallmark of her leadership throughout the development of this legislation, and I am grateful to have had the benefit of her counsel. I also wish to acknowledge the important contributions of Representative LINDY BOGGS who introduced the first domestic violence bill in the House.

In the Senate, Senator CRANSTON is to be commended for his leadership on this serious issue. I joined with him as an original cosponsor of this legislation and strongly support its comprehensive approach.

S. 1843 does not seek to impose a federally-mandated solution to the problem of domestic violence, but rather provides an effective mechanism to provide Federal support to State, local, and community activities to prevent domestic violence, and to provide direct services to the victims. It also provides an efficient means of coordinating Federal programs and activities pertaining to domestic violence.

I would further point out that the domestic violence legislation enjoys a broad range of support among religious groups, women's organizations, police, corrections and law enforcement associations, civil rights groups, civic associations, State and city agencies, and legal and medical associations.

It is my hope that this legislation will be quickly enacted and signed into law so that this much needed assistance to States and local communities can begin.●

Mr. CRANSTON. Mr. President, a third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. KENNEDY. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

MENTAL HEALTH SYSTEMS ACT

Mr. KENNEDY. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1177.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 1177) to improve the provisions of mental health services and otherwise promote mental health throughout the United States, and for other purposes.

(The amendment of the House is printed in the RECORD of August 22, 1980, beginning at page H7636.)

Mr. KENNEDY. Mr. President, I move that the Senate disagree to the House amendment and request a conference with the House, and that the Chair be authorized to appoint conferees.

The motion was agreed to; and the Chair appointed Mr. KENNEDY, Mr. WILLIAMS, Mr. PELL, Mr. NELSON, Mr. CRANSTON, Mr. METZENBAUM, Mr. SCHWEIKER, Mr. JAVITS, Mr. HATCH, Mr. HUMPHREY, and Mr. STAFFORD conferees on the part of the Senate.

DOMESTIC VIOLENCE PREVENTION AND SERVICES ACT

The Senate continued with the consideration of the bill H.R. 2977.

Mr. ROBERT C. BYRD. Mr. President, have the yeas and nays been ordered on the bill on final passage?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. HUMPHREY. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES

Mr. ROBERT C. BYRD. Mr. President, under the order of yesterday, I am authorized to call up S. 2718, Calendar Order No. 785, Export Trade Act, after consultation with the minority leader. Consultations have been had. I therefore execute the order by calling up Calendar Order No. 785.

The PRESIDING OFFICER. The bill will be stated.

The assistant legislative clerk read as follows:

A bill (S. 2718) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. STEVENSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President, I ask unanimous consent that Robert Russell of the Banking Committee staff, and

Patricia Sherman and Andrew Carothers of my staff be granted the privilege of the floor during consideration of this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President I yield to the distinguished Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I thank the Senator for yielding.

I ask unanimous consent that Mr. Bill Reinsch of my staff be granted the privilege of the floor during debate and rollcalls on this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President, the United States ran a trade deficit in June of $2.28 billion, the 50th consecutive monthly trade deficit.

The trade deficits mount with no end in sight, adding to inflation and unemployment, weakening the dollar and our influence in the world, while 20 thousand American companies which could export do not.

For years the United States relied on the conventional wisdom, including a weak dollar and higher growth rates abroad, to right the trade deficits. The futility of that course is now obvious—but the United States still has no export policy.

In January, 1978, the Senate Subcommittee on International Finance commenced a year-long study of U.S. export policy. Its report recommended a number of measures to improve U.S. competitiveness. These recommendations included the establishment of export trading companies to provide a broad range of export services to U.S. producers, linking them with overseas markets. The subcommittee also recommended revision of the Webb-Pomerene Act of 1918 to clarify the antitrust laws relating to export trade associations and export trading companies, and the use of tax incentives, such as expanding the export benefits of DISC, to enable U.S. producers to compete with their foreign competitors in the world market.

This bill implements those recommendations. It facilitates the formation of American export trading companies to bring the products of small- and medium-sized American firms to foreign markets and also benefit the largest corporations with new possibilities for "package" deals and exported turnkey projects.

The trading companies would represent all American companies worldwide, spotting market opportunities, meeting the price competition, absorbing exchange rate fluctuations, handling the details of export transactions and, through their services as intermediaries, offering a full range of services and products to foreign purchasers and domestic producers.

S. 2718 would: First, increase the financial leverage of all exporters by directing the Export-Import Bank to develop an improved guarantee program to support commercial loans to U.S. exporters; second, direct the Secretary of Commerce to promote export trading companies by providing information on such companies to U.S. producers; third, permit banks to make limited investments in export trading companies. Such investments could not exceed 5 percent of a bank's capital, and all controlling investments by banks and all investments over $10,000,000 would be subject to prior approval and conditions imposed by Federal bank regulatory agencies to insure the safety and soundness of banks and fair competition; fourth, authorize additional appropriations to the Economic Development Administration and Small Business Administration to support increased loans and guarantees for U.S. exports, including exports through U.S. export trading companies.

Title II would revise the Webb-Pomerene Act of 1918 to clarify the antitrust provisions applicable to export trade associations and export trading companies and provide a certification procedure which would enable such associations and companies to obtain antitrust preclearance for specified export trade operations. The clearance procedure would facilitate exports by permitting firms to determine in advance exactly which export trade activities would be immune from antitrust suit and which ones would not.

Title III of the bill would extend the tax deferral available under the DISC—Domestic International Sales Corporation—provisions of the tax code to the exports of export trading companies, including exports of services. The use of subchapter S of the tax code, which permits certain passthroughs to shareholders of closely held corporations would be allowed for some export trading companies. Title III has been introduced separately as S. 2757 and referred to the Committee on Finance for its consideration. Accordingly, I intend to offer an amendment deleting these provisions from the bill.

The success of trading companies in exporting U.S. products has already been demonstrated by foreign trading companies. Mitsui Trading Co. is America's sixth largest exporter. Foreign trading companies represent the businesses of many foreign nations to the disadvantage of the United States in all the world's markets.

Mr. President, this bill will substantially improve the Nation's ability to compete in the world. It will result in more jobs for American workers and will improve our ability to pay for the goods and services we import, including oil. It carefully balances other objectives, including the safety and soundness of banks, with increased export promotion.

This bill will not, by itself, restore the competitiveness of the United States in a newly competitive world. But it is a first step toward a strong export policy for the United States. No other step will do more to strengthen the marketing of American goods and services in the world. Basically, the bill repeals disincentives and impediments in the law. It is a deregulation bill. It helps to put American industry on the same footing as its foreign competitors. It gives American business, especially small business, a chance to compete in the world.

I urge the Senate's support of S. 2718.

Mr. HEINZ. Mr. President, S. 2718 is the first serious attempt by this Congress to remedy the dramatic competitive decline in the United States vis-a-vis our trading partners and our trading competitors.

This bill is the product of nearly 3 years of concerted effort by Senator STEVENSON and our committee, which has held hearings including witnesses from virtually every segment of our economy, from academics, from business people, from labor, from consumers, from exporters, from importers.

It represents, perhaps, the most carefully researched response to a national problem that I have seen in my nearly 10 years in legislative service.

And that problem is that we are faced with a situation in which our trade deficit is getting progressively worse. That is a serious problem, Mr. President, because it is through our earnings in exports that we pay our ever-increasing import bills, particularly the $90 billion a year for our oil imports.

We should be mightily concerned because, notwithstanding a burgeoning Federal budget deficit, estimated in this "year of the balanced budget" at some place between $30 billion and $40 billion, the sad fact is that our trade deficit, which is not between the American Government and our people, but between the American people and other foreign trading partners, threatens to be larger than our Federal budget deficit.

This fact—that our trade deficit is larger than our budget deficit—is a sign of the deep economic trouble this country is in.

I would be the first to admit that perhaps the legislation that we bring to the Senate floor today will not solve every one of our trading problems. But it will at least bring up into the 20th century as far as international trade is concerned, and put us on a par with our trade competitors who have long been better organized and better structured for global competition.

With respect to trade opportunities, we approved the implementing legislation on the MTN about a year ago and that was a major step toward breaking down the barriers to free and fair international trade.

However, it seems our trading competitors have taken far more advantage of those lessened barriers than we have, and the fault, if it lies anyplace, lies with the Government here in Washington, D.C.

While it is a fault, perhaps, not of commission but of omission, it is nonetheless a problem that we believe must be remedied, and remedied promptly through the passage of the strongest pos-

sible bill that we can get from this Congress and from this administration.

I believe that S. 2718 in its present form is such a bill. By opening the door to the establishment of export trading companies, it will break down the barriers that we have erected over the years to the creation of meaningful institutions to help us and our firms, our employees, and our employers, export.

There is something of an irony to the fact that the sixth largest exporter in the United States is a Japanese trading company. Where, we may ask, are all the American trading companies?

The answer is that while a few may on paper exist, in terms of structure and the ability to perform, the ability to get financing, the ability to offer services, the answer is that American trading companies do not exist. With rare exceptions, they are here only in name.

That is why our trading companies legislation, S. 2718, which addresses many of the disincentives to the effective formation and operation of trading companies, is so important.

So perhaps in the future we will be able to displace as the No. 6 U.S. exporter the Mitsui Trading Co., and maybe we will have some American trading companies right up there in the top 5 and relegate the Mitsuis and the others to the bottom 100.

Mr. President, there is one other issue to which I would like to briefly address myself. It has to do with a provision in this legislation regarding bank participation in export trading companies.

Very simply, if we are to mobilize our small- and medium-sized manufacturers into exporting, we have to have what I can best describe as strong and full service trading companies. That means financing, that means the participation of some kind of financial institutions, that means the participation, therefore, in our society of both banks and bank holding companies.

Without them, we cannot have successful, financially strong, trading companies unless we want to continue to operate with one or both arms tied behind us.

The Commerce Department has estimated that there are about 20,000 small- and medium-sized firms that could be exporting but are not. Export trading companies will facilitate the entry of these firms into world trade. The United States neglects billions of dollars in potential export business each year because small- and medium-sized producers cannot afford the cost and risks involved in fully developing opportunities to market their products and services abroad.

It is all too easy to explain away the nonparticipation of these 20,000 small and medium sized firms identified by the Commerce Department, who could export profitably but do not. The conventional wisdom is that these firms have compared the large, rich domestic market with the risky international environment and decided not to take chances, or that they have simply refused to make the effort necessary to find the right export management firm to handle the international segment of their business. These explanations may well be valid. But they do not justify inaction on the part of the administration or Congress. I believe that, in this case, we must go beyond the conventional wisdom and create an environment in which the export market actually becomes an attractive alternative to the expansion of domestic market opportunities. Export trading companies can do just that.

Obviously, we are not going to solve this problem overnight. But every successful program of trade promotion is a step in the right direction. Small and medium sized businesses have too long been excluded from the role in our Nation's export picture which similar sized firms play for our trade competitors. Where our competitors have incentives and official credit and promotion programs, we have antitrust barriers and structural impediments to surmount before our firms can even begin to compete.

This bill will help to overcome some of those barriers by encouraging the development of intermediaries to provide the marketing and financial tools necessary to help smaller business, while at the same time helping them to benefit from economies of scale and diffusion of risk.

The Japanese Shoshoga, or trading company, has strong financial ties with financial institutions, and this lesson has not been lost on many other countries. The same is true for the Europeans and Brazilians, and all the other countries that have strong trading companies.

Without question, if we want to get into the 20th century where exporting is concerned, we must have trading companies with financial muscle.

Second, there is, to me, some irony in the fact that if we do not permit American banks and bank holding companies to have necessary financial participation in American trading companies, they would be in the unique position of being able to own outright foreign trading companies in other countries, as they do now, but not here. We would be putting our American banks in the strange position of undercutting and weakening our trade surplus by the successful operation of trading companies in Brazil, Europe, and other places, owned or substantially owned by them, while prohibiting them from strengthening our trading position by permitting them to do the same thing here that they are permitted to do overseas.

We believe our legislation properly addresses this issue.

I hope that my colleagues will stand firm with Senator STEVENSON and me, with our subcommittee, and with our committee, and will defeat any crippling amendments to this bill, regardless of the color under which they may appear before our colleagues.

Allowing the participation of the banking organizations in export trading companies does involve some risk but the provisions of this bill limits their financial exposure to such a degree that the risk is quite minimal if not as close to nonexistent as can be obtained in an uncertain world. At this point, is it not more important to ask, what do we risk if we do not act to increase our exports? That risk is known. Our trade deficit will continue to grow. If we assume that we will continue with the same track record for 1980 as the first quarter of this year, we will have a $44 billion deficit; $14 billion more than last year.

In evaluating the relative risks involved in an enterprise, we should consider all the possibilities. In this case, we must weigh the risk to the banks of their involvement against the benefits to our economy which will be accrued by increased exports. The sponsors of this legislation believe that ETC's will significantly increase U.S. exports—particularly those of small and medium-sized businesses—if they are adequately capitalized. At this point, the most effective way for ETC's to raise capital is to encourage banks to get into the business. If the Senate takes actions that will discourage the participation of banks in ETC's, it will have significantly decreased the probability that this legislation will be an effective vehicle with which to obtain the goal of increased exports, a goal upon which we all agree.

S. 2718, which includes the Export Trading Company Act of 1980 and the Export Trade Association Act of 1980, can substantially and permanently expand U.S. exports, particularly by small- and medium-sized firms that do not export at present. S. 2718 would revise Government policies which have tended to discourage formation of U.S. export trading companies in the past. S. 2718 aims at long-term improvement in America's trade posture through improved export intermediation by private American export traders.

Title I of S. 2718 would: First, increase the financial leverage of all exporters by directing the Export-Import Bank to develop an improved guarantee program to support commercial loans to U.S. exporters; Second, direct the Secretary of Commerce to promote export trading companies by providing information on such companies to U.S. producers; Third, permit banks to make limited investment in export trading companies (such investments could not exceed 5 percent of the banking capital and all controlling investments and all investments over $10,000,000 would be subject to prior approval and conditions imposed by Federal bank regulatory agencies to insure the safety and soundness of banks and fair competition); Fourth, authorize additional appropriations to the Economic Development Administration and Small Business Administration to support increased loans and guarantees to enable expansion of U.S. exports, including exports through U.S. export trading companies.

Title II would revise the Webb-Pomerene Act of 1918 to clarify the antitrust provisions applicable to export trade associations and export trading companies and provide a certification procedure which would enable such associations and companies to obtain antitrust preclearance for specified export trade operations. The clearance procedure would facilitate exports by permitting firms to determine in advance ex-

actly which export trade activities would be immune from antitrust suit and which ones would not.

Title III extends the tax deferral available under the DISC (Domestic International Sales Corporation) provisions of the tax code to exports of export trading companies, including exports of services. The use of subpart S of the tax code (which permits certain passthroughs to shareholders to closely held corporations) would be allowed for some export trading companies. Title III has been introduced separately as S. 2757 and referred to the Committee on Finance for its consideration.

Mr. President, I urge my colleagues to study this bill carefully, to weigh its enormous benefits against the risks of inaction, and then to join with me in providing an overwhelming vote in favor of this vital legislation.

Mr. President, I wish to pay special thanks to my retiring colleague, Senator STEVENSON. I know of no one who has been more scholarly, more thorough, more zealous, or more singleminded in his dedication to improving the economic position of this country—in particular, its international economic position.

I know of no one who has worked harder on a piece of legislation as well as an approach to an overall problem, involving not just this measure but also the Export Administration Act amendments and other initiatives to strengthen the exporting community of this country, than has Senator STEVENSON.

It has been a great personal pleasure for me to have the opportunity, as the ranking minority member on the International Finance Subcommittee, to work with him in this very important effort. It is my view that with his retirement at the end of this year, we will be losing a literally irreplaceable asset, a knowledgeable man, committed to his job and to this country.

I would be remiss, therefore, if I did not take this opportunity, on behalf of all our colleagues, to thank Senator STEVENSON for his leadership, for his vision, for his hard work, and for his effective management of these and related issues over a long period of time. I shall miss his presence. I know that my colleagues will join me in saluting his valuable work. We hope to have the continued benefit of his guidance and counsel, even if it be from some place farther away than across the aisle.

Mr. PROXMIRE. Mr. President, will the Senator from Pennsylvania yield?

Mr. HEINZ. I am happy to yield to my friend from Wisconsin.

Mr. PROXMIRE. Mr. President, in the course of his remarks, the distinguished Senator from Pennsylvania said that our trade deficit is becoming progressively worse and our deficit will be larger than the budget deficit—a near catastrophe to our country.

I ask my good friend from Pennsylvania if he would argue that this is because our exports have been lagging, that they are not expanding the way we would expect them to expand in a growing economy. Is that what he argues?

Mr. HEINZ. The Senator from Pennsylvania maintains that our trading position is deteriorating.

Almost every country in the world is experiencing a growth in exports and in imports. We are experiencing a growth in nominal terms in both, but we are not experiencing a growth in exports as large as our growth in imports.

That creates a trade deficit. That creates a weakening of the dollar. That creates, in part, devaluations because of the floating dollar, which is inflationary and further weakens the dollar.

To me, it is relatively immaterial whether we are exporting more this year than last year. The question is, Are we playing our proper role in the world economy? Are we competitive? Or are we losing our margin for success and, instead, creating a ledger for future failure?

If one looks at the economies of Japan, West Germany, and others, to name a few, one will be forced to the conclusion that they are healthy because, among other things, they are able to maintain a strong currency and have that strong currency because they export more than they import.

Even a country like Japan, which is short on natural raw materials within its geographical boundaries, is able, nonetheless, to accomplish export miracles.

However, we have more in the way of worldwide commitments to peace and to international stability than does Japan. Therefore, I believe it is essential that we move aggressively to strengthen our clearly deteriorated international economic position.

Mr. PROXMIRE. The Senator from Pennsylvania indicated that we were lagging in our exports compared to Germany and Japan. That certainly was the strong implication of what he said. That is not true. That is not the fact.

What do the facts show? The facts show that since 1972, the rate of increase in exports for the United States has been 20.5 percent. That is a greater increase in exports than that of Germany and Japan and twice the increase in our gross national product.

In fact, according to statistics compiled in 1979 by the Federal Reserve Bank of St. Louis and just released, the U.S. exports are up 20.5 percent per year; Germany, 20.4 percent per year; and Japan up, 19.7 percent per year from 1972 to 1979. It is hard to find a developed country in the world with a larger increase in exports.

There is not case the Senator can make, on the basis of the facts, that our exports are lagging, that the reason for our deficit is that our exports are lagging.

The Senator knows that the reason for our trade deficit is that our imports are increasing, and they are increasing for a number of good reasons. One is that we are unable to compete in the automobile industry and other industries as effectively as we should, because we are losing our productivity.

Mr. HEINZ. Will the Senator permit me to respond?

Mr. PROXMIRE. Certainly—on the Senator's time.

Mr. HEINZ. I appreciate that.

Mr. PROXMIRE. The Senator has the floor.

Mr. HEINZ. First of all, anybody who would contend that our international economic position is stronger today than it was 5 years ago must be reading something different from what this Senator has been reading.

In 1972 we had on our merchandise account a net balance of minus $6 billion; we had a surplus of nearly $1 billion in 1973; a dificit of $5 billion in 1974; a surplus of $9 billion in 1975, and a dificit of $9 billion in 1976. Since that time, what concerns me is that our trade deficits have been running at or near $30 billion a year: $30.8 billion in 1977, $33.8 billion in 1978, $29.5 billion in 1979.

If we compare the first quarter of 1979 with the first quarter of 1980, our trade deficit for the first quarter of 1980 is running at twice the rate of last year's disastrous performance.

So, regardless of what reasons one may try to bring forward through manipulation of the statistics, the fact is that one would have to be something of an ostrich to conclude, based on the numbers, that we do not have any problem. We have major problems.

I respect what the Senator from Wisconsin has said. He is an excellent mathematician. He could not have got through Harvard Business School without being one, and I salute the Senator from Wisconsin for some great creativity.

Mr. PROXMIRE. Mr. President, may I say to my good friend from Pennsylvania I appreciate that very much, but looking at the arithmetic, the Senator knows perfectly well the way we look at our international balance is not solely on the basis of our trade balance. Our balance on current account is the more comprehensive measure of our position. That includes not only the trade balance. That includes the balance on what the tourists spend abroad. That includes foreign aid. That includes what we sell and and what the tourists spend in this country and it also includes our return from investments abroad, which is a very big positive item. That is the way we get to our total current account balance. That is the overall balance that indicates how we are doing.

On the basis of our current account balance we over the last 8 years have been virtually even. We have had a deficit of an average less than $400 million a year, and that is the way, as the Senator knows, that we are able to pay for what we import with what we not only export but our return on investment and our receipts from service exports and other receipts.

Overall, the case has not been made by the distinguished Senator from Illinois and the Senator from Pennsylvania that this country's international balance is as bad as it is. I know that is the current belief. I know if one walks down the street and asks the people about this who have any knowledge at all and know

what we are talking about most of them would say yes, we are in terrible shape. But look at the facts. Look at the facts, and the facts show that we have increased our exports, No. 1. The facts show, No. 2, that even with the big increase that we have in imports that our balance on current account, which includes everything, shows that we are very close to a balance over the last 8 years.

Furthermore, Mr. President, we have been able to do this in spite of the fact that we suffered the worst inflation in our history and a drop in productivity.

There is the answer. If we want to do something about improving our international position, we do not have to be so concerned about exports as we do about improving our basic economic position, increasing our productivity, reducing our inflation, and then our trade deficit will take care of itself.

I say all this preliminary to the fact. I think there is much good in the bill of the Senator from Illinois and the Senator from Pennsylvania. However, I do think that it goes so far in destroying the relationship between banking and commerce in this country that we can modify that slightly, and I mean only slightly, and have a good bill which will help promote exports.

Mr. HEINZ. Mr. President, has not the Senator's time for debate expired?

Mr. PROXMIRE. I think I have the floor.

Mr. HEINZ. It is my time, I think, still.

Mr. PROXMIRE. There is no time on this bill at all.

Mr. HEINZ. Mr. President, I yielded to the Senator from Wisconsin.

Mr. PROXMIRE. No.

The PRESIDING OFFICER. The Senator from Wisconsin has the time.

Mr. HEINZ. Very well. I apologize to the Senator from Wisconsin. I thought I had yielded to him.

Mr. PROXMIRE. Mr. President, I am simply saying to my good friend from Pennsylvania that if he will accept our amendment submitted by the Federal Reserve and look at the amendment, he will see it is a very moderate amendment. It only slightly modifies the bill of the Senator from Illinois and the Senator from Pennsylvania. If he will do that, I think he will see that we would be able to help promote exports without having the unfortunate effect of determining a principle that we have had in this country for over 100 years of keeping banking and commerce separate and we could do so in accordance with the recommendation of the Federal Reserve Board, of Mr. Volcker and Mr. Wallick, and other people who devoted a great deal of time and are deeply concerned about this and in fairness to banks big and small in this country.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 1963

(Purpose: To delete tax provisions from the bill)

Mr. STEVENSON. Mr. President, I call up amendment No. 1963.

Mr. TSONGAS. Mr. President, will the Senator yield so that I may make a statement?

Mr. STEVENSON. Yes. But first I wish to have the amendment stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an amendment numbered 1963:

Beginning on page 40, line 10, and continuing to the end of the bill, delete all of title III—Taxation of Trading Companies.

Mr. STEVENSON. Mr. President, before I yield to my good friend from Massachusetts, I wish to thank the Senator from Pennsylvania for his charitable words of a moment ago. He is too modest. Our work has been the work of a partnership that goes back many years now.

It has been a great satisfaction and pleasure for me to work with him on many of the structural weaknesses in our economy, including our failure to support our exports abroad, and I have no doubt that that work will continue with his leadership after I have left the Senate. I am grateful to him.

I yield to the Senator from Massachusetts for a question.

Mr. TSONGAS. Mr. President, I wish to make a statement.

Mr. STEVENSON. Without losing my right to the floor, Mr. President, I ask unanimous consent to yield to the Senator from Massachusetts for that purpose.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. PROXMIRE. Mr. President, I did not hear the unanimous-consent request. What was it?

The PRESIDING OFFICER. The request was that the Senator from Illinois be permitted to yield to the Senator from Massachusetts for a statement without losing his right to the floor.

Mr. PROXMIRE. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TSONGAS. Mr. President, I rise in strong support of S. 2718, the export trading company bill.

Let me at the outset comment on the statements made by the former chairman of the committee, and that is to try to give the impression that somehow the U.S. export position is rosy and that we need not worry about it.

That is a singular view, and I do not know anyone out in the real world trading community who shares it.

The example has been given, and correctly so, that U.S. exports are increasing at a rate equal to that of a major trading competitor. That is quite true.

The question is, What base do we start from? If we have a situation where 10 percent of our GNP and 20 percent, let us say, of Germany's increases at the same rate, that increase is correct. But what is not correct is that that increase is far more significant in terms of dollars and in deutsche marks for the German than it is for the United States. So we increase at the same rate but in absolute terms we fall farther and farther behind, which is exactly what is happening with the United States relative to the Germans, the Japanese, and others. So we can use these figures any way we wish, but in reality the fact is that if we take the posture that our export situation need not improve then that will be received joyously by the Japanese and the Germans who—like our exporters—know better.

This bill is very important and I think anyone who comes from a State that has export potential should be particularly concerned about it. The fact is that if we look at the United States in its relative position to our major competitors we simply do not take the export game seriously.

The only reason we are in a situation with our dollar in decline or not strong relative to the yen and the deutsche mark is that these are the competitors, and, for these competitors, the export trading company bill would be a modest, kindergarten step which they have left far behind.

The Japanese know, the Germans know, and the Swiss know they have to export to survive. Well, the United States traditionally has had something like 93 percent of its product consumed domestically, so it was not necessary for our exporters to worry about exchange rates and devaluations and all the intricacies of international trade.

Well, that era is over. You cannot import the kind of dollar amounts of oil we do, cars, TV sets, what have you, and not be in a position where we are hemorrhaging so badly that in time the entire structure will fall apart. The United States simply will not survive as a world power, industrial power, if we do not develop our ability to compete in international markets.

This bill is at best a modest step in that direction, and to have the argument made that it should be watered down even further I think is ludicrous on its face.

In addition, those companies of the United States that have the greatest potential for export in terms of new commodities, new products, innovations, happen to be the small- and medium-sized businesses, about 20,000 of them. I hope the concern for those kinds of companies will prevail in our deliberations today.

I have been involved in this issue for the last 2 years, and have served on the subcommittee which developed the legislation, and I would like to commend the Senator from Illinois and the Senator from Pennsylvania on their initiative. I think what they are talking about is, perhaps, considered a new idea now, but most people will recognize this as the obvious step as the years go on.

The issue before the Senate today concerns the nature of the bank investments in the export trading company.

The subcommittee held extensive hearings on this matter. There were prolonged negotiations with the bank regulatory agencies and, indeed, with other governmental departments. This legislation is a compromise. It is not the original legislation. It represents, I think, the best case compromise which facilitates banking involvement and, also protects

the public interest. It provides a meaningful role for financial institutions, while carefully providing for proper restraints on that role.

There are those who argue that we do not want the banks to be a major participant in export trading companies. However you may come down on that, the fact is if you take the bankers out in any significant way you do not have an export trading company. If you are not going to have an export trading company that does not mean anything, we should not even pass the bill.

Banks will supply two critical resources that small- and medium-sized companies need to have. One is investment capital. Go out and talk to some of your small businesses and ask them why they cannot be involved in the export trade, and invariably you get the response that they do not have the capital to do it.

Second, and more importantly, the small companies simply do not have the knowledge and managerial expertise in international financing. Those can only be supplied by the banks and those in the banking community.

If we try to undermine the role of the banks in this legislation, there is going to be one certain result, and that is the banks are going to withdraw. Banks will simply not be willing to play a leading role without the kind of controls which will insure sound management, minimization of risks, and the enhancement of profit.

We can structure a bill here that will make sure that in no possible case can there be any kind of violation or any kind of possible misdeed by any bank. But what you end up with is a structure that is appealing to nobody, and again we have a hollow shell of legislation that is passed out of the Senate.

I will submit for the RECORD the criteria in the legislation that limits what the banks can do. I think they are quite sound. To weaken even further the banking participation, we would make the legislation not worth passing.

Finally, let me comment on the concern about the antitrust implications of the bill. There is going to be an amendment filed by the Senators from Wisconsin, Ohio, and Massachusetts, and obviously I have a great deal of respect for these Members and generally vote with them.

The fact is, however, that to weaken this bill further beyond the compromise that came out of the deliberations of the committee is simply not wise. I think if we are going to be in a position to compete effectively with the Germans, the Swiss, the Japanese, and others, we have to be willing to look at exports in perhaps a somewhat different fashion, and I hope my colleagues, looking to the long-term viability of our country in the export trade around the world, will see fit to stick with the committee version.

I thank the Senator from Illinois. I ask unanimous consent that the limitations on the banking participation be printed in the RECORD.

There being no objection, the limitations were ordered to be printed in the RECORD, as follows:

LIMITATIONS

While the legislation permits banks to acquire a controlling interest, banking participation is limited in the following ways:

Investment in ETCs is limited to 5 percent of the bank's capital and surplus.

Total bank exposure of both investments and loans is limited to 10 percent of capital and surplus.

Bank regulatory agencies must approve controlling investments of ETC voting stock, even if the interest is less than $10 million.

Bank regulatory agencies must approve acquisitions by consortia of banks for more than 50 percent of an ETC, even if individual bank investments are not equivalent to a controlling interest.

The name of an ETC may not be similar to that of a bank investor.

A bank must terminate its ownership of an ETC if the ETC takes speculative positions in commodities.

Banks are specifically prohibited from making preferential loans to an ETC that it controls, which insures the availability of bank credit to competitors.

In addition, the banking regulatory agencies are given numerous powers and authorities with respect to banking involvement in ETCs. These include power to disapprove applications where export benefits are outweighed by adverse banking factors, and conditions which limit financial exposure, possible conflicts of interest and unsound banking practices.

Mr. PROXMIRE. Mr. President, if the Senator will yield, I would like to respond to the Senator while he is on the floor. The Senator from Utah is patiently waiting to call up some amendments and, therefore, I will defer my questioning of the Senator from Massachusetts until the Senator from Utah has had a chance to have had his amendments considered.

Mr. STEVENSON. Mr. President, the pending amendment strikes title III from the bill. Title III extends the provisions of DISC to trading companies. It also makes it clear that they are eligible for subchapter S treatment.

Those provisions have been introduced separately and referred to the Committee on Finance where they are being considered. Because they are being considered there, and that is the appropriate committee, it would not be appropriate, I believe, for the Senate to act on these provisions in this bill.

Mr. PROXMIRE. Mr. President, if the Senator will yield very briefly on this amendment, which I will support, I think it is a good amendment.

Mr. STEVENSON. I have not yielded back.

Mr. PROXMIRE. I beg the Senator's pardon.

Mr. STEVENSON. But I will yield the floor eventually.

Mr. PROXMIRE. May I tell the Senator that if he will yield for a question, I just want to ask for the yeas and nays on this amendment. I will explain why, and without the Senator's yielding I cannot do it very well.

Will the Senator yield for 30 seconds so that I can explain?

Mr. STEVENSON. Yes. I hope he will explain why we have to have the yeas and nays on an amendment as to which there is no opposition.

Mr. PROXMIRE. The reason why, Mr. President, I think the yeas and nays are necessary on this is it is my understanding that this is in the House bill or likely to be in the House bill. It will be in conference, and an amendment like this, which is so important, I think it is necessary that we have a RECORD vote. I think the RECORD vote will indicate the Senate's position emphatically that the DISC provision should be out, and for that reason I think we should have a rollcall vote.

Mr. STEVENSON. Mr. President, the vote of the Senate, whether it is recorded or not, will indicate nothing about the position of the Senate on this issue because the amendment is offered only with a view to giving the Committee on Finance an opportunity to report legislation on a House-originated bill. As we all realize, this bill, which is not House-originated, would be subject to a point of order on the House side.

Mr. PROXMIRE. May I suggest that we set this amendment aside temporarily and let the Senator from Utah call up his amendment, and we can act on them and then act on the amendment of the Senator from Illinois. Is that all right?

Mr. STEVENSON. It is not all right, but I do not have much choice except to ask unanimous consent that the amendment be temporarily laid aside, Mr. President in order to permit the Senator from Utah to bring up his amendments.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Chair recognizes the Senator from Utah.

UP AMENDMENT NO. 1527

(Purpose: To add clarifying language to this bill)

Mr. GARN. Mr. President, first, let me thank my colleagues for asking unanimous consent. My amendments are brief and they are going to be accepted.

Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah (Mr. GARN) proposes an unprinted amendment numbered 1527.

Mr. GARN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 35, between lines 19 and 20, insert the following:

(f) Compliance with other laws—Each association and each export trading company and any subsidiary thereof shall comply with U.S. export control laws pertaining to the export or transshipment of any good on the Commodity Control List to controlled countries. Such laws shall be complied with before actual shipment.

Mr. GARN. Mr. President, this is the first of two amendments that are needed to clarify important aspects of the future role of export trading companies in East-West trade.

My first amendment simply clarifies the fact that export trading companies shall be required to comply with U.S. export control laws. This amendment makes it incumbent on both the shipper and the export trading company to see that export control laws have been observed before an item is shipped, and that no loopholes are used to avoid these laws because there has been a middleman involved in the exporting process.

It also requires export trading companies, which are not mentioned in the Export Administration Act at present, to provide end use statements whenever they transship goods included on the commodity control list. This means that the intended end use following each transshipment facilitated by that company shall be described fully.

I understand this amendment is acceptable to the managers of the bill.

Mr. HEINZ. Mr. President, I have examined the Senator's amendment. I think it is a meritorious amendment, and certainly for the minority side we are prepared to accept it.

Mr. STEVENSON. Mr. President, as I understand this amendment it makes it clear that the exports of trading companies from the United States are subject to the Export Administration Act, and that certainly is our intention.

I think it is a sound amendment. It makes what was intended clear, and that being the case I am delighted to accept the Senator's amendment.

Mr. GARN. I thank the managers of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Utah.

Mr. GARN's amendment (UP No. 1527) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1528

Mr. GARN. Mr. President, I send another unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Utah (Mr. GARN) proposes an unprinted amendment numbered 1528.

Mr. GARN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 37, line 9, after the period, add the following: "The Office Export Trade in the Commerce Department shall report to the Congressional Committees of appropriate jurisdiction on an annual basis, all East-West trade transactions requiring validated licenses, and any other relevant information on the role of U.S. export trading companies or subsidiaries thereof in East-West trade."

Mr. GARN. Mr. President, my second amendment calls for an annual report to Congress on the East-West trade activities of export trading companies and any subsidiaries they may establish abroad. After my recent experience with Commerce Department reticence, I feel this is the only way Congress will have to assess the role of these new companies in an important foreign policy area. If these companies become involved in the shipment and transshipment of strategic goods, the appropriate congressional committees should have some means of judicious oversight over the implications of such involvement for the country's security and economic welfare.

This is simply requiring that these companies, if they are created under the terms of this bill, would report to Congress on an annual basis.

I understand the managers are willing to accept this amendment.

Mr. STEVENSON. Mr. President, I think this is a sound amendment, too. It does require reports, as the Senator indicated. Those would be of value to the committee. I am prepared to accept the amendment.

Mr. HEINZ. Mr. President, we are prepared on our part to accept the amendment, as well.

Mr. GARN. I thank my colleagues.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Utah (Mr. GARN).

The amendment (UP No. 1528) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GARN. Mr. President, I thank my colleagues for their consideration.

AMENDMENT NO. 1963

Mr. STEVENSON. Mr. President, I believe under the previous order, the Senate now returns to amendment No. 1963, is that correct?

The PRESIDING OFFICER. The pending business now before the Senate is the amendment offered by the Senator from Illinois.

Mr. STEVENSON. Amendment No. 1963?

The PRESIDING OFFICER. Amendment No. 1963.

Mr. STEVENSON. That is the amendment which deletes the tax provisions. The Senator from Wisconsin wants a rollcall vote. That is his right.

But I think the record should show that many of us who vote for this amendment do not support the amendment. We are voting for the amendment in order to give the committee, the Finance Committee, an opportunity to consider the issue and to report legislation on a House-originated bill. These tax provisions would make the bill subject to a point of order in the House.

So, many of us who support the amendment will vote against it; that is to say, those of us who support the tax provisions will vote for the amendment which deletes them. So the rollcall vote, in my humble judgment, will indicate nothing about the true feeling of the Senate on this issue.

With that, I hope, if the Senator insists, that we can proceed to a rollcall vote and get this amendment out of the way.

Mr. HEINZ. Mr. President, will the Senator yield?

Mr. STEVENSON. I am happy to yield to the distinguished Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I want to associate myself with Senator STEVENSON's remarks. I strongly support the DISC provisions in the bill that we reported. But I also support deleting them from the legislation at this time so that we may give the Senate Finance Committee the appropriate opportunity to study and, hopefully, report, as is their right, a revenue measure that contains the amendments to DISC that will make the export trading company legislation work.

I would only add that, as a member of the Finance Committee—and I see two other very distinguished members of the committee on the floor, Senator BENTSEN and Senator DANFORTH—that we are going to do everything we can to expedite consideration of a DISC provision to go hand in hand with this legislation.

I am reasonably confident that such a provision will not only be acceptable to the members of the committee but that it will, in fact, be taken up during the week of September 13 when the committee will reassemble to put together a committee amendment to the bill earlier reported. I am quite confident that the committee amendment will include a DISC provision that is necessary to making the export trading company legislation work.

Therefore, while I support the DISC provisions in this bill, I also support removing them at this time and will vote for the motion to take them from this bill. But I do not want anyone to misunderstand my position in terms of support of the substance.

Mr. BENTSEN. Will the Senator yield for a further comment?

Mr. STEVENSON. Yes, I yield to the Senator from Texas.

Mr. BENTSEN. Mr. President, I would like to support and buttress these remarks. As a member of the Finance Committee, we have a responsibility there and the jurisdiction there. DISC has had substantial support within that committee. I think it is an integral part of what we are trying to do in encouraging exports. I support this as a procedural thing for the establishment of jurisdiction.

I compliment the chairman of the subcommittee, the Senator from Illinois, for all that he has done over the years in trying to encourage exports. Before people really understood how much exports were a part of testing the effectiveness and the efficiency of our economic system and contributing to trying to curb inflation and holding the value of the dollar, the Senator from Illinois was out there leading the fight.

I hope that in this very important piece of legislation we will not break down in procedural questions, because I think it is very fitting, with the long fight we have had in leading this, that, frankly,

I would like to see this as one of his many major contributions in his tenure in the Senate, not just because I want his name on it, but because I think it is a great step in trying to encourage exports for our country.

I will, therefore, support his position in returning that portion of it to the Finance Committee for their consideration. I also say to Senator HEINZ that I am confident we could move very quickly after September 13 to take positive action on it.

Mr. STEVENSON. Mr. President, I thank the Senator for his very kind words and also for his explanation of his support for the amendment. It now would appear, on the basis of this record, that there is substantial support in the Senate for the tax provisions.

I am also grateful to my colleagues for their assurances that those provisions will receive attention soon in the Finance Committee, the appropriate committee, and with, I think, on the basis of everything I know, a very strong possibility of favorable action by the Senate on these provisions this year, a year in which it is probable that the Congress will act on taxes. So I thank them.

If we are going to have a rollcall vote——

Mr. PROXMIRE. Mr. President, may I have the floor?

Mr. STEVENSON. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, in the first place, I think we should be very clear that what we are doing is exactly what the Senators from Illinois and Pennsylvania say—we are not acting on the substance of this matter. We are acting on whether or not we should proceed to include these tax provisions without waiting for hearings and without waiting for determination by the Finance Committee on it.

They have had some hearings, I presume, but they have not come to a conclusion on it. They have jurisdiction and we do not. As a matter of fact, the prime jurisdiction in this matter, as we all know, under the Constitution is the Ways and Means Committee in the House and with the House itself. So we are really jumping the gun by putting this into a bill without having our own Finance Committee and without having the House having had a chance to act on it first.

Mr. President, the tax provisions here would make the export trading companies with bank ownership eligible for DISC tax treatment. They would make receipts from the export trade services eligible for DISC tax benefits. They would exclude export trading companies from the requirements of subchapter S relating to closely held corporations requiring that 20 percent of such a corporation's annual income be domestic income.

I am afraid that the committee's action on the Tax Code is another example of the questionable procedures that have been followed in considering this bill. The bill should not be considered at all by the Senate until the tax writing committees have given detailed consideration to these tax provisions.

That was my position last May and I have been saying this since then. I am grateful to my good friend from Illinois and my good friend from Pennsylvania for finally coming around to my views.

That is why I think this is such an important vote. It does not. I would agree wholeheartedly, indicate that they have changed their mind as to whether or not these tax provisions should be in it. It does indicate, however, that they agree now, and we ought to make that very clear by an emphatic Senate vote, that we should not act until the Senate Finance Committee has had a chance to give us their views on this. They have jurisdiction; we do not.

On substantive grounds, I join with the administration in opposing this major expansion of the tax benefits afforded to export activities.

In the most recent committee hearings on this legislation, Commerce Secretary Klutznick, giving the administration's position, stated the following:

> Many, if not all, ETCs should be able to meet the requirements of present DISC legislation and benefit from DISC tax deferral status. Modification of U.S. banking laws to permit bank ownership of export trading companies will effectively expand DISC coverage without requiring any change in the DISC statute itself. However, to amend DISC legislation to cover exports of all services, as well as services provided by other U.S. firms to export trading companies, as S. 2379 would do, would definitely alter the nature and scope of the DISC program and substantially increase its revenue costs. The present realities of the budget situation do not permit such an extension at this time. I could also raise questions about our international obligations in this area and our concerns for tax equity.

Assistant Treasury Secretary Bergsten subsequently provided the committee with a more detailed statement of the administration's position and with estimates of the potential impact of title III on tax revenues. Giving what were styled as "conservative estimates," the Bergsten letter stated that the extension of DISC benefits to "services produced in the United States" could result in revenue losses of $200 to $500 million and similar coverage of "export trade services" could cost the Treasury $100–$200 million. I also agree with the administration's opposition to the amendments to subchapter S contained in title II on the ground that any legislation of this sort should be considered within the context of the proposal by the Joint Committee on Internal Revenue Taxation to overhaul subchapter S. This seems to me to be perfectly reasonable and in fact far preferable to precipitous actions by this committee.

For that reason, Mr. President, I am glad the Senator from Illinois submitted his amendment, and for that reason I think it is appropriate that we have a rollcall so it is clear where the Senate stands on legislation that may be in the House bill. For that reason, Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, we are looking at what could be a 3-year $100 billion hemorrhage on trade. We have had some $60 billion in the last 2 years and it could approach $40 billion this year. We have expanded our trade. We made some substantial increases in the amounts of exports. But the problem that we run into is other countries are also doing the same thing. So we get down to a question of what percentage of that export trade belongs to the United States.

For a long time in this country, we had such an incredible domestic market that we did not think foreign trade was necessary to us. So we ignored it. But now we find that we have substantial inroads in our own domestic markets because of the competitiveness of some of the other countries and the growth that they have shown.

I think one of the real tests for the efficiency of an economy is how it does on trade, how it does against the competitor.

You do not have to follow everything that your competitor does and everything that the most successful one does. But you can learn from what they have done.

If you look at the Japanese and the incredible increase they have had in their trade, what they have been able to accomplish, one of the tools that they have used is export trading companies to try to assist.

The question is, Should banks be involved? Well, I think they ought to have the opportunity to be involved. I share the concern of my friend from Wisconsin about control of export trading companies by banks. I do not want a repetition of the system in Germany. If you want to buy an interest in a company in Germany, who do you go to? You go to a bank and they sell you an interest in the company because they own it. They do not have the kind of stock exchange and the stock market that we have in this country. They have that kind of power and I do not want to see it happen in this country.

But I do think where we have put limitations on them, where it requires the regulatory authority's approval before you allow it, that you can have that kind of control and you can protect that kind of an encroachment.

We held 9 days of hearings by the Joint Economic Committee in the Far East and there we found a diminishing percentage of the trade that is being carried on by the United States, an incredible increase by Taiwan, by Hong Kong, by Japan, by South Korea, and our not adjusting to the local markets, not doing the enterprising we ought to do, not establishing name identification, and we sure did not see much in the way of small companies involved, not there.

What do we do about it? Why can the bank help?

Well, while we were holding our hearings in Hong Kong, I had three representatives of three banks in Houston, Tex., regional banks, who had representatives in Hong Kong, who were paying for the rent on offices, paying for the salaries of those representatives there. Who do they want to promote? They would like to promote their depositors back home.

They would love to see an increase in the size of the small businesses or the medium-size business depositing with them back in their hometown. They would like to do it, because that makes him more successful, a bigger depositor of their bank.

But time and time again we have small businessmen, or heads of medium-size companies, that decide, "I would really like to take a trip to Hong Kong, and I would like to find some excuse to expense it. So what I am really going to say is this is a business trip and I am going over there to explore the foreign markets."

At least 99 times out of 100 I am sure he does not accomplish much of anything, other than getting an upset stomach.

Then he comes back and argues with the IRS and then he really does have an upset stomach because they deny it. They say this was not a serious effort.

But if he has the representatives of his local bank where he has the contracts, they send the letters of introduction off and he arrives over there. They tell him what he can do, how he can adjust the local market, who he ought to see, give him the introductions, help him get underway and hopefully, seriously, do a job in selling his products overseas.

We have to see more of that type of thing accomplished. That is why I think the trading companies are very important and that is why I believe that having the banks having the capability or the ability to become involved in that is also very important and a major contribution that can be made. I strongly support that.

I believe that the trading companies are one of the positive, affirmative things we can do this year to show that we are deeply concerned about trade for our country.

We have done a lot of other things but this is more meaningful. We have taken the commercial attaches from the State Department and put them under the Commerce Department, as commercial attaches, who are the lowest on the pecking order. If you want to continue to grow in the State Department, be sure to take a commercial attache's job. Years ago we took the agricultural attaches away from them and now we have taken the commercial attaches away from them. Now we are seeing a step forward. I think this is a major thing that can be accomplished to try to help the export of U.S. products.

I would hope very much that before we leave for the Labor Day recess we will have taken positive action.

The Senator from Illinois has been in the forefront of this fight for a long time. He has given a great deal of thought and consideration to it. I would like to see it implemented to do something to help us be more affirmative, to show we are more serious about what we want to do in increasing trade.

I assure you, Mr. President, with the drain on our dollars going to the OPEC countries, because of what is happening to us in the importation of oil, we are going to see the competition for trade intensify substantially. This is one of the positive things we can do to help.

Mr. President, as an original cosponsor of S. 2718 I am convinced this legislation is absolutely essential if the United States is to succeed in the tough, competitive world of trade. I am also pleased to see that so many of my colleagues concur in this analysis and 55 Senators have agreed to cosponsor the Export Trading Companies Act.

It is no secret, Mr. President, that this country's recent trade performance leaves much to be desired. During the past 2 years our balance of trade deficit has exceeded $60 billion and could go over $40 billion this year alone.

This chronic hemorrhage of dollars abroad contributes to domestic inflation. It debases the value of currency and undermines efforts to deal with our energy problems. It creates real doubts about our future access to rapidly expanding world markets. The magnitude and persistent nature of our deficits suggest that the United States is in danger of becoming uncompetitive in world trade.

Before America can return to world economic leadership and compete successfully in the international marketplace, we must demonstrate that we can put our own economic house in order. Our problems with trade are obviously a function of deep-seated domestic economic problems like inflation, declining productivity, low rates of savings and investment, and excess demand in the system. It will take time, sacrifice, and discipline to achieve the sort of fundamental reforms required to restore a healthy, dynamic American economy characterized by stability and real growth. As we succeed in this effort our trade performance will inevitably improve.

The long term nature of our economic problems should not, however, discourage us from taking steps that will have an immediate and favorable impact on our ability to export.

The time has long since passed when American business and industry can accept unique, self-imposed restraints on our ability to market our products abroad.

S. 2718, the Export Trading Companies Act, will clearly promote American commercial interests and act as a spur to our exports. We have seen that efficient export trading companies, able to provide a wide variety of services for their clients, have been an essential ingredient in the commercial success of nations like Japan that have eerged as consistent winners in the battle for export opportunities.

Earlier this year I traveled to East Asia with a delegation from the Joint Economic Committee. The purpose of our trip was to assess American competitiveness in the world's fastest growing market.

While in the region we met with members of the American business community and with local government officials. We held 9 days of hearings. And I can tell you, Mr. President, that the issue of export trading companies was high on the agenda in every country we visited.

The American business community overseas, the people who are on the front lines in the battle for world markets, made the point time and again that our export performance would be well served by legislation to permit more efficient and effective American export trading companies. And S. 2718 is precisely the sort of legislation they were talking about.

Thousands of smaller and medium size U.S. businesses are currently put off by the risks and complexity of exporting. S. 2718 will facilitate and encourage their entry into export markets. Trading companies of the type envisioned in this legislation will help spread out the risks of foreign trade and absorb currency fluctuations. They will help identify emerging market opportunities, assist in organizing joint construction projects abroad, and handle the logistics of foreign trade that currently deter so many potential exporters.

In addition, S. 2718 helps to clarify many of the long-standing antitrust ambiguities that currently hinder the formation of American consortia to bid on significant export projects. Senator DANFORTH and I have long been interested in the effort to update the Webb-Pomerence Act and make it applicable to the export of services as well as goods. S. 2718 accomplishes that objective. It also expands and clarifies the antitrust exemption for export trade associations and transfers administration of the act to the Department of Commerce. It creates an office within Commerce to promote joint export activities and establishes a specific certification procedure that will eliminate the element of uncertainty in current law.

I am also enthusiastic, Mr. President, about the banking aspects of the Export Trading Company Act which would permit the U.S. banking community to participate in export trading companies and provide the financial resources and expertise that have become such an essential ingredient in the success of our competitors. We have seen, time and again, that the ability to offer attractive credit terms to potential foreign buyers often means the difference between winning and losing sales.

While the United States has traditionally discouraged relationships between banks and trading companies, our competitors in trade have gone in the opposite direction and, with bank-owned trading companies, have frequently gained a competitive advantage over U.S. exporters. By permitting U.S. banks to acquire ownership in export trading companies under specified conditions, S. 2718 would provide an important new asset in our drive to restore export competitiveness to the American economy.

This legislation is not a line for line copy of the Japanese model; it does not provide for unrestricted bank access to export trading company ownership. By demanding approval of Federal banking agencies in appropriate circumstances, S. 2718 contains the necessary safeguards to prevent abuses when banks enter commercial export activities. A bank that owns stock in a trading company is also prohibited from making credit available to that company on terms more favorable than those afforded similar borrowers in similar circumstances.

For too long, Mr. President, this Nation has approached international trade as a luxury rather than an necessity. Today success in the world of trade has become an indispensible ingredient of domestic prosperity. The United States has been slow to adjust and adapt to the changing environment of trade, and our share of world exports has decreased dramatically as a result.

As we move to bring about the fundamental reforms that will restore stability and real growth to our domestic economy, we can all agree on the necessity of removing, wherever possible, impediments to American exports.

Our exporters must compete against the combined resources of the most efficient and aggressive trading nations in the world. I can see no good reason to continue to deny them the support and assistance of full-fledged American export trading companies.

Enactment of the Export Trading Company Act will even up the rules of the game and enable our exporters to compete more effectively for world markets.

This legislation reflects high credit on the work of Senator STEVENSON and his colleagues on the International Finance Subcommittee. It clearly deserves the support of the Senate and I hope we can move quickly to enact it into law.

Mr. PROXMIRE. Will the Senator yield?

Mr. BENTSEN. I am glad to yield. I understand the concern of my friend from Wisconsin.

Mr. PROXMIRE. I want to tell the Senator from Texas that I agree with virtually everything he said. That may shock him a little bit, because he may have anticipated that I take a little different position on trading companies. I do not.

I think the Senator will also agree that the report of the Joint Economic Committee, on which he did such a magnificent job in getting agreement of both Republicans and Democrats, is a powerful expression of the absolute necessity that we improve our productivity and reduce the rate of inflation. That is the heart and soul of our export problem. If we can get inflation under control and improve our productivity, then we can make progress on exports and on reducing our trade deficit. The Senator has been one of the leading fighters in that field. He has made some very constructive suggestions as to how to do it.

Would the Senator consider the amendment I am offering, recommended by the Federal Reserve Board, which would still permit the banks to have an ownership position in export trading companies—No. 1—and in the event that the Federal Reserve determined that in order to improve our export position with respect to a particular bank in a particular area, it was necessary for the banks to have a controlling ownership position—more than 20 percent ownership position—they would be permitted to go ahead and do that? Why would that not be a practical approach that would get around a situation that would otherwise knock out 100 years of experience, in which we have separated the banks from commerce?

We all know what a terrific disadvantage it is to try to compete with another firm which is owned by a bank, because they have access to credit. There is every reason in the world to expect that they are going to be able to beat you to the punch on it. We not only have opposition from the Independent Bankers Association to the bill in its present form—representing the small banks—but I am sure the overwhelming majority of businessmen concerned with the kind of competition they would have, would also oppose this bill unless we can get this kind of reasonable modification in accordance with the recommendations of the Federal Reserve Board.

Mr. BENTSEN. Mr. President, I understand the Senator's point, but I think the limitation of 20 percent is one that gets down to a level where we are not going to have a serious participation on the part of the bank. Then we say, OK, we let them have an exemption for that if they can prove that an export opportunity is going to be lost.

Mr. PROXMIRE. If the Senator will yield on that, they can own up to 100 percent if the Federal Reserve Board approves it.

Mr. BENTSEN. That is what I said, with the exception that they have to prove that an export opportunity would be lost. This gives me some concern, that definition in a particular frame of time, as to being able to get that sold and to have it in a continuing thing.

In addition to that, if I am going to be operated on, I sure want the knife in the hands of a friendly surgeon. I just really do not believe that is what the situation is here. We have someone who is going to operate that really does not want you to have any of it.

Mr. PROXMIRE. The whole purpose of the bill is, if the Senator will yield, to expand exports. If it cannot meet that test, why should we permit something that can pose a serious danger to the competitive system we have had in this country and that, for 100 years, we have followed in prohibiting banks from engaging in commerce?

Otherwise, it would permit, without the approval of the Federal Reserve Board, banks to own any number of businesses where they would compete unfairly. This is a very moderate modification of the export trading company legislation.

Mr. BENTSEN. I say to my friend, when we talk about 100 years of doing something one way, that does not necessarily mean that conditions have not changed, time has not changed, competition has not changed. I think, finally, we have to adapt to it. That is what we are talking about doing here. I believe that this is a positive move forward with very careful safeguards placed around what the banks might be able to do.

Mr. PROXMIRE. If the Senator will yield very briefly, the term "services" in the bill is defined as the following on page 4, line 14:

(3) the term "services produced in the United States" includes, but is not limited to accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services.

That is about as comprehensive a litany as we can get and, as I say, it is not confined to that. They can get into almost anything.

What I am proposing is—certainly the Federal Reserve Board is a friendly surgeon. As the Senator knows, they are expert in this area. They certainly are in favor of doing all they can to promote a strong dollar and to improve our export position. But this would safeguard our banking structure. I hope the Senator will consider the amendment.

As I say, I view a vote for the amendment as a vote in favor of export trading companies, not a vote against them.

Mr. TSONGAS. Will the Senator from Texas yield?

Mr. BENTSEN. I am happy to yield.

Mr. TSONGAS. I would like to inquire of the Senator from Wisconsin——

Mr. BENTSEN. Mr. President, I shall give up the floor. If I am going to be a conduit, I would rather the Senator would have the floor on his own.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Massachusetts.

Mr. TSONGAS. Mr. President, if I may inquire of the chairman, he made the statement that small- and medium-sized companies were opposed to the bill in its present form. My experience is just to the contrary. Before we let that argument pass without a challenge, I should like to give the Senator from Wisconsin an opportunity to provide the authority for that statement.

Mr. PROXMIRE. Mr. President, after the Senator from Massachusetts left the committee—which was a great loss, believe me—he was replaced by a very brilliant Senator, GEORGE MITCHELL. But we also miss my good friend from Massachusetts. After that, as the Senator knows, we had hearings on this matter. We had the export management companies come in and they opposed the bill. I do not, but they did. They are small businesses and they represent small businesses.

I do not argue that they were right. They are not. But I say that what the small businesses oppose is having banks in a position to own a competitor and then compete from a position where, if there is any credit crunch—and we all know there are going to be credit crunches in the future—their competition will not get the money they need and they will get it.

Mr. TSONGAS. Is the Senator saying in his argument that small- and medium-sized businesses are opposed to the bill—the exact contrary of what I have been told by all the people I have dealt with in Massachusetts—that it is existing export companies who, by definition, would now have competition if this bill passes? Is that it?

Mr. PROXMIRE. No, what I am telling the Senator is I do not know whether they are opposed to the bill or not. I am not opposed to the bill and they may

well support my position. I say it stands to reason that, on the basis of representation we have had for years and years—the Senator knows how often insurance companies, auto leasing companies and others have come up and said, "Do not let the banks get into this business. They do not know what they are doing, they make mistakes in the business, but they have a colossal advantage—they have credit. They give our competition credit which we cannot get." That is where I say we run into opposition on the part of small businesses.

Mr. TSONGAS. Mr. President, I simply say that any Senator listening who would like to find out how smaller companies feel about it should give them a call between now and the vote, because I have talked to a number of Massachusetts-based companies that have enormous export potential. They are strongly in favor of this bill. I just did not want the statement to go unchallenged that gave the impression that these companies are opposed. It is just the opposite.

Mr. PROXMIRE. Mr. President, as long as the Senator has the floor, he made a statement earlier and I would appreciate it very much it he would permit me to question him for just a couple of minutes.

The Senator talked about the decline of the dollar compared to the deutschmark and the yen. He indicated, I presume, the reason that he made that allegation was that he felt the dollar declined in part because our exports were too feeble, they should be built up and they should be greater than they were.

He said that, after all, sure, we may have a bigger increase percentagewise in exports than Japan and Germany, but that does not mean anything, because we start from a smaller base than they do.

Mr. TSONGAS. As a percentage of GNP, that is correct.

Mr. PROXMIRE. As a percentage of GNP. But I think that nobody, including, I am sure the Senator from Massachusetts, on mature reflection, would expect that we would ever have exports in relationship to gross national product as great as, say, in Japan, Germany, or England. No way. They have to import virtually all their food in both Germany and Japan. They import virtually all their oil. They are small islands that have to export a great deal to pay for that. We are not in that position.

What I am saying, however, is that on the basis of statistics which are very clear—no one has refuted them—we have increased our exports more than our competitors have, percentagewise and absolutely.

Mr. TSONGAS. Mr. President, I was in the Chair yesterday when the chairman was making statements on the increases—as I recall, 20-percent increases—perhaps all the comments he made yesterday were in the 20-percent range.

If the chairman starts off with the premise that we can never hope to be a major trading power percentagewise, as the Japanese and the Germans, he is correct.

I do not happen to share that assumption.

The only reason the Japanese and Germans have done it is because they have the discipline to do it. It has nothing to do with imports and exports, because many countries around the world have exactly the same problems in terms of energy and food that do not happen to have major trading companies.

The difference is that they decided they will be in this thing and do it well. That is the same kind of discipline I would like to see us impose on ourselves.

Mr. PROXMIRE. May I say to my good friend from Massachusetts that we both agree we should have export trading companies, we both agree we should improve our exports. I would put more emphasis on whether or not we can improve our productivity, or our fight against inflation.

I think that it fundamental and more important. But I have no objection to the trading companies, provided we have the kind of traditional and healthier competitive relationship than in the past in respect to banks and competition, to those at a disadvantage, when the bank owns a competitor and the smaller business has to compete without that access to credit.

Mr. TSONGAS. Another way of arguing it is that we can send the United States in to play tennis with the Japanese and give them a paddle ball. If we do not give them the tools, why bother with the process?

Mr. PROXMIRE. The Federal Reserve is not interested in sabotaging this legislation. They made a perfectly sincere proposal to permit us to have effective export trading companies.

They take a position which I think is very moderate, that the banks can own completely an export company. They can own the whole thing.

However, they should come for approval, if they own more that 20 percent, to the Federal Reserve to make sure they meet the requirements of the act, which is necessary in order to increase our exports.

Mr. TSONGAS. I spent 2 years on the Senator's committee, and listened to the chairman argue with the Federal Reserve. Now they happen to be in agreement with the chairman. So now we have wisdom and prudence at the Federal Reserve.

I would also like to point out that the bill contains the following limitations:

Investment in ETC's is limited to 5 percent of the bank's capital and surplus. Total bank exposure of both investments and loans is limited to 10 percent of capital and surplus. Bank regulatory agencies must approve controlling investments of ETC voting stock, even if the interest is less than $10 million. Bank regulatory agencies must approve acquisitions by consortia of banks for more than 50 percent of an ETC, even if individual bank investments are not equivalent to a controlling interest. The name of an ETC may not be similar to that of a bank investor. A bank must terminate its ownership of an ETC if the ETC takes speculative positions in commodities.

That, I would argue, is rather significant, and that was what the compromise in the committee was all about.

One could argue that we have gone too far. It seems to me, if we go further, in essence we kill the bill.

Mr. PROXMIRE. If the Senator will yield for a moment, the 5-percent figure the Senator refers to in capital and surplus, of course, that is not very much for a little bank. With a big bank, it can be plenty.

Furthermore, these are highly leveraged operations, as the Senator knows.

It is perfectly possible a big bank, under these circumstances, with 5 percent of their capital and surplus, 10 percent, including loans, would be in a position to have a very decisive and extensive ownership position that could be very damaging to competitors.

I am willing to go along with this, providing the Federal Reserves says it is necessary in order to increase our exports.

I do not see why that is unreasonable.

Mr. TSONGAS. In that position, we may have a situation where we cannot compete. The Japanese and Germans have those kinds of tools and that capability.

Mr. PROXMIRE. I say to my friend from Massachusetts, the Senator indicated this is simply a matter of providing financing to export companies. It is not. It will allow banks to take a position in commodities and goods. Banks have no expertise whatever in warehousing and merchandising goods.

There is nothing in the bill keyed to small business specifically. This would be something that could work with the large business, instead.

Does the Senator agree with that, that this bill does go beyond financing, this permits banks to take positions on commodities or goods?

Mr. TSONGAS. I simply reiterate the statement I made earlier that the bank must terminate its ownership of an export trading company if the trading company takes speculative positions on commodities.

Mr. PROXMIRE. What expertise do the banks have in buying commodities and buying goods and warehousing, merchandising?

Mr. TSONGAS. I suppose one could argue, what expertise do small companies have now?

Mr. PROXMIRE. We have had bad experience with banks getting out; once beyond financing, we are in great trouble. We had to bail out some of those banks.

That is the kind of thing. I do not think the Senator from Massachusetts or the Senator from Wisconsin are far apart.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 1963) of the Senator from Illinois.

The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Idaho (Mr.

CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. McGOVERN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. SPARKMAN), the Senator from Georgia (Mr. TALMADGE), and the Senator from Washington (Mr. MAGNUSON) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from New Mexico (Mr. DOMENICI), the Senator from South Dakota (Mr. PRESSLER), the Senator from Delaware (Mr. ROTH), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 84, nays 0, as follows:

[Rollcall Vote No. 381 Leg.]

YEAS—84

Armstrong	Goldwater	Nelson
Baker	Hart	Nunn
Baucus	Hatch	Packwood
Bayh	Hatfield	Pell
Bentsen	Hayakawa	Percy
Biden	Heflin	Proxmire
Boschwitz	Heinz	Pryor
Bradley	Helms	Randolph
Burdick	Hollings	Riegle
Byrd, Harry F., Jr.	Huddleston	Sarbanes
Byrd, Robert C.	Humphrey	Sasser
Cannon	Inouye	Schmitt
Chafee	Jackson	Schweiker
Chiles	Javits	Simpson
Cochran	Jepsen	Stafford
Cohen	Johnston	Stennis
Cranston	Kassebaum	Stevens
Culver	Laxalt	Stevenson
Danforth	Leahy	Stone
DeConcini	Levin	Thurmond
Dole	Lugar	Tower
Durenberger	Mathias	Tsongas
Durkin	Matsunaga	Wallop
Eagleton	McClure	Warner
Exon	Melcher	Williams
Ford	Metzenbaum	Young
Garn	Mitchell	Zorinsky
Glenn	Morgan	
	Moynihan	

NOT VOTING—16

Bellmon	Kennedy	Roth
Boren	Long	Sparkman
Bumpers	Magnuson	Talmadge
Church	McGovern	Weicker
Domenici	Pressler	
Gravel	Ribicoff	

So Mr. STEVENSON'S amendment (No. 1963) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DANFORTH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. JAVITS. Mr. President, will the Senator yield to me such time as I may require?

Mr. STEVENSON. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, I thank my colleague very much.

Mr. President, I support this legislation which I know from my own involvement in it has been arduously crafted for over a year by Senators STEVENSON, DANFORTH, and others, including Senator HEINZ. I am very grateful that they have done what is so essential for the American export trade.

The provisions of this bill relating to export trading companies in particular reflect the kind of dynamic innovation that our export trade so sorely requires. It has been apparent to many of us in the Congress that the way out of our deteriorating export competitiveness is not to be achieved simply through exchange rate movements or changes in the business cycle—both of which, in their own way provide intermittent, but increasingly unpredictable fillips to our international competitiveness.

Yet any export trade policy—and that is what we have been talking about for the past year, Mr. President—must include innovative tools whereby our export potential is unleashed and supported by Government action.

Despite recent indications from the administration that things are better than they appear respecting our trade performance, our export performance is still in a grim state. One can look at relative improvements in the current account brought about principally by altered rules for repatriated earnings, or one can look at the leveling off of our massive trade account deficit as cause for optimism.

But Mr. President, in the markets that will increasingly determine our export competitiveness, the facts are clear. U.S. companies are being out-hustled and outsold in the developing countries and third markets of the world. It is clear that we need aggressive marketing to establish a foothold in these areas before our competitors lock up these markets for their own goods, technologies and suppliers.

Both the concept of the Export Trading Company and the strengthening provisions of the Webb-Pomerene Act are forceful and positive changes that I hope will serve as the cutting edge for further export expansion ideas taking shape here in the Congress and in the private sector. We have ideas before us that have been advanced by the President's Export Council, on which Senator STEVENSON and I sit, through the Senate Export Caucus, of which I am a member, through the various trade committees in the Congress and through private trade groups. Yet, as witnessed by the recent unfortunate events surrounding the Eximbank appropriations measure, I feel we have some distance to go before either we or the administration can muster the will to support similar innovative ideas like the Export Trading Company proposal.

This legislation before us today represents tireless negotiations and compromise with those who believe that these proposals go too far in untying the hands of U.S. business to sell overseas. The most difficult of these discussions involved the exemptions granted to export trade associations and export trading companies from Clayton Act and FTC antitrust provisions.

Mr. President, the provisions of the bill carefully safeguard the principles of our antitrust laws and permit ample coordination among the Secretary of Commerce, the Attorney General and the FTC to insure that certain conditions are met prior and subsequent to the certification process.

I think it is well documented that uncertainty, or at least perceived uncertainty, about the extraterritorial application of U.S. antitrust laws is one of the greatest single inhibitors to increased U.S. foreign trade and investment. The overwhelming handicap of not knowing how his operation will be looked upon by law enforcers here at home compounds the inherent problems resulting from the already uncertain and risky climate abroad which faces the U.S. businessman engaged in exports.

This uncertainty results in the loss of new markets for U.S. exporters who forego opportunities to be daring and innovative and rely instead on tried and true markets. Furthermore, even those businessmen who take advantage of the Webb-Pomerene Act maintain that the exemption presently provided is too narrow to allow them sufficient support to compete in the fiercely competitive world *marketplace of today*.

This matter of extraterritorial application of U.S. antitrust law is of special *concern to me. As the sponsor with Senator Mathias of S. 1010, a bill to establish a Commission on the International Application of U.S. Antitrust Laws, I* have sought to provide a thorough review of this subject. The aim of the Commission is to address these concerns and to promote a more productive relationship between the antitrust laws and the U.S. business community. The antitrust provisions of S. 2718 are necessary steps in the direction of rationalizing our antitrust objectives with our international trade interests. As proposed in S. 1010, the Commission would assess additional steps that may be taken in this direction without compromising our continuing goal of vigilant antitrust enforcement.

The growing size of foreign conglomerates and the active participation of foreign governments in commercial activities make it very difficult for U.S. firms to compete effectively, for they are hindered by strict antitrust constraints which do not affect their foreign competitors. I am convinced that we must continue vigorously to enforce very high standards for business practices affecting U.S. citizens. On the other hand, we must not completely disregard pragmatic considerations when dealing with cartels and combinations created with either the support or the encouragement of foreign governments.

Under current export practices, the bids for a foreign construction contract in many cases will include several from small U.S. companies, but only one bid from each foreign country. That one bid is generally from a large consortium which has been organized with the approval of the foreign government and frequently with an active government role.

To cite a specific example, I refer to a recent article in the August 18, 1980 issue of Business Week entitled "The Engineers Leading a National Export Drive." The article tells of the formation of a State-created engineering corporation (Technip) owned by a consortium of French companies, banks and govern-

ment agencies including the French Atomic Energy Commission and the Banque National de Paris. In fact 82 percent of Technip's stock is held by government agencies, nationalized companies and state controlled banks. As one industry analyst put it, "When Technip does it, it offers a complete package." In the developing world, increasingly the principal competitive arena for U.S. manufactured exports, Technip has been dubbed France's "export strike force."

I ask unanimous consent that the entire article appear at the end of my remarks.

Mr. President, to those who indicate that proposals such as S. 2718 are premature, I would say look to the developing country markets and see what U.S. bidders are confronting. S. 2718 is a modest and necessary tool which can open up our export base to small and medium sized firms and also can provide U.S. exporters with a team approach in third markets that will increasingly be the proving ground for U.S. export policy.

I would also add that I am opposed to the pending amendment which would further restrict majority ownership by banks of export trading companies. Controling interest by banks is vital to the success of this export legislation. The amendment being proposed would not only impose excessively strict requirements before controlling interest would be approved by banking authorities, but in my opinion would needlessly deter bank investment in ETCs since bank investment strategies increasingly call for controlling interest to safeguard bank and depositor interests.

I thank my colleague for yielding.

Mr. PROXMIRE. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Illinois has the time.

Mr. JAVITS. I will yield.

Mr. PROXMIRE. Mr. President, I am not going to take much time.

I do say I have great respect for the Senator from New York, as he knows.

I am wondering if the Senator has had a chance to look at the Federal Reserve Board amendment which would permit banks to have an ownership interest, in fact permit them to go to 100 percent under some circumstances. The circumstances are that the Federal Reserve itself would have to determine that this was necessary in order to promote exports. Absent that, the banks would still be allowed to own 20 percent.

But what our amendment would do would be to follow what the Federal Reserve recommended to us and would not permit banks to get involved in commerce and trade unless we had this highly competent and expert agency determining that that was necessary in order to promote exports.

Mr. JAVITS. Mr. President, the Senator enjoys my equal respect and regard.

I will look at it again. I have examined that amendment. I feel that the export trading corporations are so essential to our country that I wish to go with the committee bill and on that ground, but I will examine the Senator's points and look at the Federal Reserve idea again.

Mr. PROXMIRE. I appreciate very much the Senator's openmindedness on this. He is as expert as anybody in this body on banking, trade, finance, and exports and of the importance of exports to our foreign policy as well as to our commerce and our economy.

So I do hope the Senator will take another look at this amendment.

As the Senator knows, Chairman Volcker, a man of great ability, and Mr. Wallich, who has given this his principal attention by the Federal Reserve Board, an outstanding economist, both feel very fervently and strongly about this amendment, and I hope the Senator will take another look at it.

Mr. JAVITS. As I said before, I will. But I think this matter of freedom of action is essential if we are to have the kind of support we need.

Mr. DANFORTH. Mr. President, the United States needs to become an aggressive exporter of its goods and services. One need only look at our growing trade deficit to appreciate that our industries are losing the competitive battle within world markets.

For the first 70 years of this century our Nation had a positive trade balance with its trading partners. For the better part of this century, U.S. industry was efficient, had innovative capacity, and was unexcelled in technological leadership. Today, the statistics and the outlook is not that encouraging. In 1977 the United States ran a $26.5 billion deficit, a $28.5 billion deficit the next year, and a $25 billion deficit last year. This year the projected trade deficit is $30 billion. The economic stability of our Nation is being swiftly eroded.

In the last two decades the U.S. share of free world exports declined from 15 to 11 percent. Within the last 5 years our major competitors have managed to increase real exports by 4 percent a year, while the value of U.S. exports, adjusted for inflation, has shown little if no growth. Looking at the relative importance of exports as a percentage of GNP, U.S. exports account for aproximately 7 percent of GNP in contrast to Japan where exports account for 14 percent of GNP and for 22 percent of GNP in Germany. Something has to be done to spur U.S. exports.

Mr. President, S. 2718 is a step in that direction. The bill encourages and provides a framework within which export trading companies may be formed. The bill enables banking institutions to invest in export trading companies under specified and carefully regulated conditions. Further, S. 2718 significantly amends the Webb-Pomerene Act of 1918 to clarify the antitrust provisions applicable to export trade associations and provides a certification procedure whereunder export trading companies and trade associations may receive antitrust clearance for specified export trade activities.

Mr. President, I would like to address my remarks to the antitrust provisions of S. 2718, specifically title II. Title II finds its origin in S. 864, the Export Trade Association Act of 1979 introduced by myself and Senators BENTSEN, CHAFEE, JAVITS, and MATHIAS on April 4, 1979, and later joined on by Senator HEINZ. Hearings were held on S. 864, and other bills, on September 17 and 18, 1979, before the Subcommittee on International Finance of the Senate Committee on Banking, Housing, and Urban Affairs. A revised version of S. 864 was introduced on February 26, 1980, as amendment No. 1674. Hearings on the revision were held on March 17 and 18, and April 3, 1980.

Before I address myself to the particulars of title II of S. 2718 I believe a brief historical background of the current law—the Webb-Pomerene Act of 1918 (15 U.S.C. 61-66)—which title II amends will prove beneficial.

In 1914 Congress directed the Federal Trade Commission to study and report to the Congress on the conditions affecting U.S. export trade. In 1916 the Federal Trade Commission published a report that found American manufacturers and producers when attempting individually to enter foreign markets to be at a disadvantage because of strong combinations of foreign competitors and organized buyers. The report also noted that the threat of antitrust prosecutions under the Sherman Act deterred exporters from carrying out collective efforts to challenge foreign cartels.

In response to the findings of the FTC report, Congress passed in 1918 what has come to be known as the Webb-Pomerene Act. The purpose behind passage of the Webb-Pomerene Act was to provide U.S. exporters with the ability to compete in international markets on an equal basis with their foreign competitors. The Webb-Pomerene Act provides a limited exemption from both the Sherman and Clayton Antitrust Acts to qualified joint ventures in export trade known as Webb-Pomerene associations. The Webb-Pomerene law exempts from U.S. antitrust laws any association established "for the sole purpose of engaging in export trade." (15 United States Code, Section 62) as long as the association, its acts, or any agreements into which the association enters, do not: first, restrain trade within the United States; second, restrain the export trade of any domestic competitor of the association; or third, artificially or intentionally enhance or depress prices within the United States of commodities of the class exported by such association or substantially lessen competition within the United States or otherwise restrict trade therein (15 United States Code, Sec. 62).

The Webb Act defines "export trade" to include only "trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States" (15 United States Code, section 61). As is obvious, the Webb Act does not extend to exports of services.

Mr. President, both the legislative history of the Webb Act and the administrative and judicial interpretation of the act shed light on its scope and intended effect.

The debate on passage of the Webb Act was centered on the resolution of two points mentioned in the FTC report. These were: First, that American firms and U.S. exports might be benefitted if cooperative arrangements reduced the

costs of foreign marketing or enhanced the bargaining power of American firms when dealing with foreign buyers; and second, that domestic trade might be affected adversely if cooperative arrangements enabled American firms either to exploit consumers in the home markets or exclude non-members firms from the export market.

The legislative history of the Webb Act, including both House and Senate Reports and the debates in the CONGRESSIONAL RECORD, evidences that Congress presumed that formation of export trade associations would enable smaller American firms to compete more effectively with large and powerful firms abroad by permitting American sellers to combine and bargain collectively. It was believed that the combined power of American firms would provide the means for entry into foreign markets which previously were blocked by the power and tactics of sellers and buyers abroad.

Early in the history of the Webb Act the FTC issued a letter setting forth its enforcement intentions. In that letter, known as the 1924 "silver letter," the FTC announced that an association could qualify under the Webb Act if it existed for no other purpose than to fix prices and allocate sales in foreign markets—as long as the substantive criteria set forth in the act were met—and while foreign corporations were excluded from membership in Webb associations, these associations might enter into any cooperative arrangements with non-nationals which might enhance their trade position in foreign markets.

A second determination of the "silver letter"—permitting restrictive agreements between Webb associations and foreign nationals—was rescinded in 1955. Under the new criteria outlined by the FTC, if export associations enter into restrictive agreements with foreign competitors, those agreements will not be within the antitrust protections of the Webb Act and the lawfulness of the associations' activities will be judged under the Sherman Act, as would similar conduct by an individual exporter.

After issuance of the "silver letter" it was not until the 1940's that further clarification was afforded the scope of the Webb-Pomerene antitrust exemption through a series of investigations conducted by the commission known as the "202 series of recommendations." These investigations concluded that a Webb-Pomerene association may not:

Enter into agreements of any kind with domestic producers who are not members of the association which fix prices, terms of sale, or otherwise restrain the free export of goods of non-member firms. Pipe Fittings and Valve Exxport Association. (1948)

Enter into agreements of any kind whereby exports of domestic nonmember producers are deducted from the export quota of the association. Florida Hard Rock Phosphate Export Association. (1945)

Enter into agreements of any kind which prohibit association members from selling to domestic exporters in competition with the association, or which deduct sales by a member within the United States from the member's export quotas through the association. Phosphate Export Association. (1946)

Falsely represent that it is the sole export representative of the United States in a given industry. Pacific Forest Industries. (1940)

Enter into agreements of any kind with owners or operators of shipping terminals, thereby restricting use of such terminals to only association members. Phosphate Export Association. (1946)

Be involved in acquiring control of any patent or process useful in the production of the goods it markets. Sulphur Export Corporation. (1947)

Enter into an agreement of any kind which precludes or restricts the right of the association or its members from using a trademark or label in the United States. General Milk Co., Inc., Ltd. (1947)

Enter an agreement of any kind whereby it controls or attempts to control any of the terms or conditions of sales by its members within the United States. Phosphate Export Association. (1949)

Enter an agreement of any kind with any foreign producer or cartel whereby the United States is designated as an exclusive trade area, or imports into the United States are otherwise curtained or restricted. Export Screw Association of the United States. (1947)

Own stock, either directly or indirectly through subsidiaries, in corporations or other producers outside the United States. Export Screw Association of the United States. (1947)

Enter an agreement of any kind whereby foreign producers are guaranteed the right to sell within a given area a specified tonnage over and above sales in that area by the association. Sulphur Export Corp. (1947)

Enter an agreement of any kind which discriminates among its members as to the right of withdrawal, resignation or restricting the right of former members to compete with the association after withdrawal. Phosphate Export Ass'n. (1946)

Conduct office operations jointly with a domestic trade association. Carbon Black Export, Inc. (1949)

Enter an agreement of any kind to "maintain the status quo" in the world market of the industry and to do nothing which would encourage or increase competition in the industry. Sulphur Export Corp. (1947)

Take into membership anyone who is not a citizen of the United States, nor any foreign purchaser, customer, representative or agent of a foreign company. Phosphate Export Association. (1946).

In 1966 the Commission in Advisory Opinion No. 91 determined that membership by a firm owning foreign entities is permissible in a Webb-Pomerene association.

Further clarification as to the parameter of the antitrust exemption provided under the Webb Act has been gained through adjudication of a number of cases brought by the Department of Justice. Of these cases there are two major decisions which interpret the scope of the Webb Act.

In the first case, United States against Alkali Export Association (Southern District, New York, 1944) the court found that a Webb association had violated the Sherman Act by participating in foreign cartels that engaged in practices resulting in the use of monopoly power to extinguish the competition of independent domestic competitors engaged in export trade and, which carried out practices that stabilized domestic prices by removing surplus products from the domestic market. In the second case, United States against Minnesota Mining Mfg. (District Court, Massachusetts, 1950) the court held that an export association could not establish or operate jointly-owned facilities abroad and then went on to give illustrations of conduct that a Webb association may lawfully carry out: First, an association could be created by a majority of the firms in an industry; second, the association could be used as the members' exclusive foreign outlet; third, members of the association could agree that goods would be purchased only from member producers; fourth, resale prices could be fixed for the associations' foreign distributors; fifth, prices could be fixed and quotas established for members; and sixth, foreign distributors could be required to handle only the members' products.

The Minnesota Mining case provides the most authoritative interpretation of the scope and rationale of the antitrust exemption under the Webb-Pomerene Act. As stated by the court:

> Now it may very well be that every successful export company does inevitably affect adversely the foreign commerce of those not in the joint enterprise and does bring the members of the enterprise so closely together as to affect adversely the members' competition in domestic commerce. Thus every export company may be a restraint. But if there are only these inevitable consequences, an export association is not an unlawful restraint. The Webb-Pomerene Act is an expression of Congressional will that such a restraint shall be permitted.

In enacting the Webb-Pomerene Act, Congress envisioned an eager American business community availing itself of the opportunity to pool its facilities, resources, and expertise in such a fashion as to implement an ambitious joint exporting program. That vision never materialized.

At their high-water mark between 1930 and 1935, Webb-Pomerene associations numbered 57 and accounted for approximately 19 percent of total U.S. exports. Today the number of associations has dwindled to around 30 and their share of total U.S. exports has dipped to less than 2 percent.

The reasons for this poor showing are many. To list but a few:

The business community traditionally has placed top priority on tapping the vast domestic market and has been much slower to focus on the prospects overseas.

The ever-expanding U.S. service industries have been excluded from qualifying for the act's antitrust exemption.

The Department of Justice, and to a lesser extent the Federal Trade Commission have been perceived by the business community as exhibiting a thinly veiled

hostility toward Webb-Pomerene associations. Therefore, the threat of antitrust litigation has served as a deterrent to broader utilization of the Webb-Pomerene Act.

All in all, there remains the strong impression among most parties that the Webb-Pomerene Act is a quaint relic of the past—a cracked plate that is not good enough to be brought out for company and yet not so useless as to be thrown away. This is regrettable, particularly at a time when we are suffering year in and year out $30 billion deficits.

Title II to S. 2718 modifies the Webb-Pomerene Act in a way that will permit many more American firms to make use of its updated provisions to promote exports.

Title II does the following:

It makes the provisions of the Webb-Pomerene Act explicitly applicable to the exportation of services. (The National Commission for the Review of Antitrust Laws and Procedures made this same recommendation in its report to the President.)

It expands and clarifies the act's antitrust exemption for export trade associations, and provides an antitrust exemption for export companies formed under title I of S. 2718.

It requires that the antitrust immunity be made contingent upon a preclearance procedure.

It transfers the administration of the act from the FTC to the Department of Commerce.

It creates within the Department of Commerce an office to promote the formation of export trade associations and trading companies.

It provides for the establishment of a task force whose purpose will be to evaluate the effectiveness of the Webb-Pomerene Act in increasing U.S. exports and to make recommendations regarding its future to the President.

Mr. President, with respect to amendments made to the Webb-Pomerene Act by title II of S. 2718, section 201 states the short title of the act while section 202 sets forth findings by the Congress regarding exports and joint exporting activities and the need for amending the 1918 Webb-Pomerene Act (15 United States Code, sections 61 to 66).

Section 203 amends section 1 of the Webb-Pomerene Act (15 United States Code, section 61) and defines the pertinent terms to be used in the amended Webb-Pomerene Act. "Export trade" is amended to include trade in services as well as that in goods, wares or merchandise. "Service" is defined as meaning intangible economic output and is intended to be an all-encompassing definition, a term not limited by usage relevant to any particular point in time. The term "trade within the United States" retains the definition under section 1 of the Webb-Pomerene Act. The definition of "antitrust laws" is intended to be all inclusive of both Federal and State statutes prescribing the competitive norms within the marketplace. Within the Federal jurisdiction this includes the Sherman Act, the Clayton Act, the Wilson Tariff Act and the Federal Trade Commission Act. The remaining definitions in section 203 are self-explanatory. It should be noted that the amendments to the Webb Act contained in title II are expanded to include qualified "export trading companies" as well as Webb associations.

Mr. STEVENSON. If I may inquire of the Senator from Missouri as to section 203 of title II.

Mr. DANFORTH. You may.

Mr. STEVENSON. There seems to be some discrepancy between the language of S. 2718, as reported by the Senate Banking Committee and the section-by-section analysis contained in Senate Report 96-735. Specifically, section 203 of the bill includes the following definition of "association":

> The term "association" means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any state or of the United States.

The section-by-section analysis of section 203 in the committee report includes the following:

> The term "association" refers to any combination of persons, partnerships, or corporations, all of which must be citizens of the United States or created under the laws of any State or of the United States. A foreign controlled subsidiary created under the law of any state or of the United States, however, cannot be a member of the "association".

Your original bill, S. 864, which is now title II of S. 2718, contained a prohibition against export trade association participation by foreign controlled subsidiaries located in the United States. However, that limitation was deleted in the revised version of S. 864 (Senate amendment 1674), was not included in S. 2718 as reported. Because participation of foreign controlled entities has been an area of uncertainty as well as controversy, clarification of the discrepancy between the bill's actual language and the committee explanation is desirable. Specifically, does title II of S. 2718 contain any prohibition against the participation of foreign controlled subsidiaries?

Mr. DANFORTH. There is no such prohibition as long as the foreign controlled subsidiaries meet the requirement of paragraph (5) of section 1 of the act that they be "created under and exist pursuant to the laws of any State or of the United States."

Mr. STEVENSON. I thank the Senator from Missouri.

Mr. DANFORTH. Section 204 of title II amends sections 2 and 4 of the Webb-Pomerene Act (15 United States Code, sections 62 and 64) and establishes the scope of the antitrust exemption. Section 2 of the Webb-Pomerene Act exempts from the application of the Sherman and Clayton Antitrust Acts (specifically sections 1 to 7 of title 15 of the United States Code) any Webb association that is established for the sole purpose of engaging in export trade; does not restrain trade in the United States; does not restrain the export trade of any domestic competitor of the association; that does not artificially or intentionally enhance or depress prices within the United States of commodities of the class exported by the association; or does not substantially lessen competition within the United States.

Section 4 of the Webb-Pomerene Act extends the jurisdiction of the Federal Trade Commission Act to include unfair methods of competition used in export trade even though the acts were engaged in outside the United States.

Section 204 of title II establishes a new section 2 to the Webb-Pomerene Act. Section 2(a) sets out the eligibility criteria for the antitrust exemption afforded under the act for export trade associations and trading companies. Section 2(a) establishes six eligibility criteria. They are that the association or trading company and their export trade activities:

First, serve to preserve or promote export trade;

Second, result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association;

Third, do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association;

Fourth, do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association;

Fifth, do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members; and,

Sixth, do not constitute trade or commerce in the licensing of patents, technology, trademarks, or knowledge, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or export trading company or its members.

With the exception of the requirements in paragraphs (1), (4), and (5) of section 2(a) of the act—provisions that impose additional criteria for eligibility in addition to those found in the standards of the current Webb-Pomerene Act—the substantive law of antitrust as modified by the amended Webb-Pomerene Act—the substantive law of antitrust as modified by the amended Webb-Pomerene Act has not been altered. The amendment of the Webb-Pomerene Act by section 204(a) of title II of S. 2718, with the exceptions as noted, is a codification of court interpretations of the Webb-Pomerene exemption to the domestic antitrust laws. In this regard I make specific reference to the decision in United States against Minnesota Mining & Manufacturing Co. which I alluded to earlier in my remarks. Also, the amendment is consistent with the present enforcement policy of both the Department of Justice and the Federal Trade Commission.

As stated by Ky Ewing, Deputy Assistant Attorney General, Antitrust Division, Justice Department, during hearings on

S. 864 (now Title II to S. 2718) before the International Finance Subcommittee of the Senate Banking Committee on September 18, 1979:

We note (that S. 864) would require that a restraint of U.S. domestic trade be substantial before the exemption would disappear. The purpose of this proposal . . . is to bring the Act into what we conceive to be the current state of antitrust law interpreted by the court. (September 17, 18 hearing record on Export Trading and Trade Associations, p. 138.)

Similarly, Daniel Schwartz, Deputy Director, Bureau of Competition, Federal Trade Commission, testified that the antitrust standards specified in S. 864 "are essentially equivalent to the standards of the Webb-Pomerene Act." (September 17, 18 hearing record on Export Trading and Trade Associations, p. 194.)

In his prepared statement, Mr. Ewing further explained that:

The judicially accepted legal threshold test for applicability of the Sherman Act to activity abroad places a heavier burden on government and private plaintiffs than that applicable domestically. The presence of a substantial and foreseeable effect on U.S. domestic or foreign commerce is required, not merely some minimal effect. (September 17, 18 hearing record on Export Trading and Trade Associations, p. 144.)

Mr. Ewing also noted in his testimony before the subcommittee that:

The Department of Justice has long predicated its enforcement efforts in export related matters upon the ability to prove a substantial and foreseeable effect on U.S. commerce. (September 17, 18 hearing record on Export Trading and Trade Associations, pp. 154–155.)

Mr. HEINZ. Would the Senator from Missouri yield for a question on section 204(a)?

Mr. DANFORTH. Yes.

Mr. HEINZ. If section 204(a) is nothing more than a codification of not only current judicial understanding of section 2 of the Webb Act but also the enforcement intent of both the Department of Justice and the Federal Trade Commission, why was it necessary to amend this section of the Webb Act with the exception of paragraphs (1), (4), and (6) as you noted?

Mr. DANFORTH. The amendment is necessary to provide certainty to the business community in their international trade activities assuring them that their activities do not run afoul of domestic antitrust laws. This is accomplished by establishing a certification procedure and by codifying not only present applicable case law but also the enforcement intentions of the antitrust oversight branches of our Government. Two examples will suffice. Under the present Webb-Pomerene Act if an activity of a Webb association is "in restraint of trade within the United States" (section 2 of the Webb-Pomerene Act) then the international trading activity of that association is not exempt from prosecution under the antitrust laws. When is a "restraint" actionable? When it is de minimus, insignificant, something more than inconsequential, substantial, or just what kind of measurement is to be employed? The Court in Minnesota Mining held that the restraint has to be something more than the inevitable consequences of the joint activity of competitors. The Department of Justice stated its enforcement intent under the Webb Act to be against joint exporting activities that have a substantial and foreseeable restraint on domestic trade. It would seem to this Senator that for the business community to be sure as to the circumstances underwhich its international trade conduct is to be held accountable, that the test judging the conduct be written in law. It is for this reason that "substantial" modifies the phrase "restraint of trade" and "substantially" modifies "lessening of competition" in section 2(a) of the act.

A second example relates to section 2 of the Webb-Pomerene Act which states that a joint exporting activity which "artificially or intentionally enhances or depresses prices within the United States" is outside the scope of the antitrust exemption provided by the act. The point I wish to make here is that for a business venture to rely on such a test—"artificially or intentionally"—is to place reliance on a standard which gives a false sense of security to joint exporting activities. The courts in the area of antitrust jurisprudence have developed a test that looks not to the mind—intent of the actors—but to the foreseeable consequences of their actions—the effect. It is for this reason that under paragraph 3 of section 2(a) of the act, the eligibility criteria is that the joint exporting activity does not "unreasonably enhance, stabilize or depress prices within the United States * * *", a test that looks to the effect of the actions, not at the intent of the actors.

Mr. HEINZ. I thank the Senator from Missouri for his explanation.

Mr. DANFORTH. It should be noted that the eligibility criteria found in paragraph (6) of section 2(a) of the act requires nothing more than a determination by the Secretary that the international trading activity of the trade association or export trading company not be solely trade in the "licensing of patents, technology, trademarks, or know-how" with the exception that such trade may be present if it is incidental to the sale of goods or services. It is the purpose of S. 2718 to further U.S. export trade in goods and services and not to promote trade in processes or ideas that could well result in the opposite effect occurring.

Mr. President, under section 2(b) of the act an export trade association, export trading company and their respective members that have their trade, trade activities and methods of operation certified according to the procedures set forth under section 4 of the act and carried out in conformity therewith are exempt from the operation of the antitrust laws be it private or sovereign—State or Federal—enforcement of those laws. The immunity from prosecution under the antitrust laws is complete from the day the certification goes into effect until it is either revoked or rendered invalid pursuant to actions taken under section 4 (d) or (e) of the act. If a revocation or invalidation occurs under the act, the loss of immunity is prospective only.

Mr. STEVENSON. Will the Senator from Missouri yield for an inquiry?

Mr. DANFORTH. Yes.

Mr. STEVENSON. Would the Senator, for the benefit of his colleagues, and as the author of title II of S. 2718, explain how the antitrust immunity provided under title II, which attaches after certification, differs from the antitrust immunity afforded under the current Webb-Pomerene Act.

Mr. DANFORTH. I would. Under current law, a Webb-Pomerene association that complies with the filing requirements of section 5 of the Webb Act and which is not in violation of the substantive law standards of section 2 of the Webb-Pomerene Act is exempt from the operation of the antitrust laws but only as to those sections of the Sherman and Clayton statutes set out in the Webb-Pomerene statute. Further, neither the fact of immunity nor the extent thereof is known until an association is sued and obtains a judicial determination that section 2 of the Webb-Pomerene Act has not been violated. What the Webb association has is only a hope. A case in point is United States against United States Alkali Export Association—Southern District of New York, 1944. In that case a Webb association was charged with entering into agreements with foreign cartels for the purposes of dividing world alkali markets, assigning international quotas, and fixing prices in certain territories other than the United States. The Webb association admitted the agreements but asserted in defense that it had complied with the filing requirements of section 5 of the statute, that its activities were not in violation of section 2 of the statute and therefore the association was immune from prosecution under the antitrust laws. Notwithstanding the association's belief that it was in compliance with the law, the court found to the contrary. The court's holding placed the arrangements employed by the alkali association outside the protective provisions of the Webb Act and exposed the association to liability under the antitrust laws. The Webb association which was organized in 1918 found out, after appeals, that the antitrust immunity which it believed it had for 40 years did in fact not exist.

Under the procedures established by title II of S. 2718, a Webb association—or for that matter an export trading company—whose export trade activities have been certified and which association or company acts within that certification knows for certain that those activities are exempt from both private and sovereign enforcement of either State or Federal antitrust laws.

The latter, besides encompassing the Sherman and Clayton antitrust laws and the Wilson Tariff Act includes the antitrust provisions of the Federal Trade Commission Act, sections 5 and 6 thereof. The certainty provided through the certification process is not lost until action is taken pursuant to the provisions of title II either to revoke or invalidate

the certification. If the latter occurs, the loss of the antitrust exemption is prospective—for future conduct only.

Mr. STEVENSON. I thank the Senator. I can see that title II provides certainty to Webb associations and trading companies as to what activities they may undertake without fear of prosecution or suit under the antitrust laws.

Mr. DANFORTH. Under section 2(c) of the act, when a certificate is issued by the Commerce Department, and the Department of Justice or Federal Trade Commission has previously advised the Department of Commerce of its disagreement with a determination to issue a certificate granting immunity under the act, the immunity from the operation of the antitrust laws is held in abeyance for 30 days. This provision is applicable to the issuance of a certificate under section 4(b).

Section 205, Mr. President, provides conforming changes in style to section 3 of the Webb-Pomerene Act (15 United States Code, section 63).

Section 206 amends sections 4 and 5 of the Webb-Pomerene Act (15 United States Code, sections 64 and 65) and adds an additional seven sections to the act. Section 4 of the Webb-Pomerene Act extended the jurisdiction of the Federal Trade Commission Act to include acts committed outside the United States. Under title II both the Department of Justice and the Federal Trade Commission have authority to seek invalidation of a certificate when the export trade, export trade activities, or methods of operation of the association or trading company no longer meet the requirements of section 2 of the act. One of the eligibility criteria under the act, specifically paragraph (4) of section 2(a), is that of "unfair methods of competition," an antitrust standard uniquely within the expertise of the Federal Trade Commission and a standard which establishes a norm of competitive behavior prescribed by section 5 of the Federal Trade Commission Act. While under the current Webb Act there exists no exemption for joint exporting activity that may be found to violate section 5 of the Federal Trade Commission Act, such an exemption is provided under the Export Trade Association Act of 1980."

Section 5 of the Webb-Pomerene Act establishes administrative requirements for associations operating under the act. Each association, within 30 days after its formation, has to submit a statement to the Federal Trade Commission giving details concerning its certificate of incorporation and bylaws. The association must also furnish to the Commission such information as the Commission requests. The Commission may also investigate associations if it believes that the law may have been violated. Recommendations for readjustment can be made by the Commission and if the association does not comply with the recommendations the Commission may refer its findings to the Department of Justice for any appropriate action. Under the present Webb-Pomerene law a Webb association that complies with the filing requirements of section 5 would not know if it had an immunity from the operation of the antitrust laws until a judicial determination was rendered that section 2 of the Webb-Pomerene Act had not been violated.

Mr. President, section 206 of title II provides a new section 4 to the Webb-Pomerene Act. Section 4(a) establishes the procedure to apply for certification as either an export trade association or export trading company. The section, specifically paragraphs (1) through (9), describes the information to be included in the application for certification which paragraphs I believe are self-explanatory. Most notable of the informational filing requirements are a description of the circumstances showing that the association or export trading company will serve a need in promoting the export trade in the goods or services involved, a description of the methods by which the association or company intends to conduct its export trade and any other information which is reasonably available to the applying parties and which is necessary for the grant of certification.

Under section 4(b)(1) the Secretary of Commerce is required to certify an association or company within 90 days after receiving the application. During this 90-day period the Secretary will have the opportunity to consult with both the Department of Justice and the Federal Trade Commission. The purpose for the consultation is to provide an opportunity for the two antitrust enforcement agencies of our Government to share with the Secretary of Commerce their respective analysis of and any concerns they may have relative to the eligibility criteria of the act, section 2(a).

Under section 4(b)(1) an association or company will be granted a certificate upon a determination by the Secretary that first, the association or trading company and their respective export trade, trade activities, and methods of operation meet the requirements of section 2 of the act and second, that the association or company and their respective activities will serve a specified need in the promotion of the applicable export trade.

Mr. HEINZ. Will the Senator from Missouri yield for a question?

Mr. DANFORTH. Yes.

Mr. HEINZ. There has been some concern raised as to the application of the "needs test" in title II of S. 2718. As the Senator from Missouri is aware, in its report to the President and the Attorney General on January 22, 1979, the National Commission for the Review of Antitrust Laws and Procedures concluded that if the Congress determines that it is necessary to continue the Webb-Pomerene exemption, it should seriously consider that before any immunity from the operation of the antitrust laws is afforded an association of joint exporters, the latter "be required to make a showing of need." Under section 2(a) of the act, specifically paragraph (1), one of the eligibility criteria for ascertaining whether a certification is to be issued is whether the joint exporting activities "serve to preserve or promote export trade." How are the eligibility criteria of section 2(a)(1) related, if at all, first to the needs showing under section 4(a)(6) and second, to the needs determination required of the Secretary under section 4(b)(1)?

Mr. DANFORTH. There is no relationship.

Mr. HEINZ. Would the Senator then explain what is required in the showing of a specified need under section 4 and the reason for the eligibility criteria of paragraph (1) of section 2(a)?

Mr. DANFORTH. The reason for providing an exemption from the operation of the antitrust laws for the joint exporting activities of either a Webb association or export trading company is that without such an exemption, and an exemption which is certain, it would not be reasonable to conclude that such joint exporting activities would be undertaken except on an infrequent basis. Therefore, to encourage such activity, an exemption is available. However, the exemption should only be utilized to preserve—that is to say, maintain the status quo—or promote—that is to say, add to—export trade. To be eligible for the exemption such a finding—that the association or trading company will preserve or promote export trade—should be made by the Secretary of Commerce. Further, since the existence of that fact is one of six eligibility criteria, the finding would be subject to judicial consideration under a section 4(e) action.

On the other hand, the determination by the Secretary under section 4(b)(1) utilizing information tendered pursuant to section 4(a)(6) is not subject to judicial consideration under a section 4(e) action. The reason behind requiring the Secretary to not only determine that the six eligibility criteria of section 2(a) will be met but that the activities of the Webb association or export trading company will serve a specified need in promoting the export trade covered by the certification is simple. It was believed that those seeking to avail themselves of the benefit of the Webb-Pomerene exemption should come forward and share with the oversight agency, the Department of Commerce, the reasons they believe their activities will be in furtherance of the export trade of our nation. The needs demonstration required by section 4 of the act is nothing more than a subjective explanation by the association or trading company as to how its activities will further U.S. trade. The Secretary in his determination will either agree or disagree with that evaluation.

Mr. HEINZ. I thank the Senator. I too believe that the needs showing within section 4 contemplates nothing more than a subjective explanation by the Webb association or trading company that the activities of the association or company will further U.S. export trade.

Mr. DANFORTH. Mr. President, the Secretary, under section 4(b)(1) must specify in the certificate the permissible export trade, trade activities, and methods of operation of the association or company. The immunity from the operation of the antitrust laws provided by section 2(b) of the Act applies to those enumerated activities.

Under section 4(b)(1) the Secretary must issue the certificate or deny the application 90 calendar days after an ap-

plication is filed but may extend that process by an additional 30 days with the agreement of the applicant. After an application is filed, by the 45th day, the Secretary is to deliver to the Attorney General and the Federal Trade Commission a copy of any certificate the Secretary proposes to issue. No later than 15 days thereafter—in the case of a certificate delivered on the 45th day, by the 60th day—the Attorney General or Commission may give written notice of an intent to offer advice on the determination. If the Commission or Attorney General does not respond within the 15-day period or formally advises the Secretary of no disagreement with his intent to issue a certificate then the Secretary may issue a certificate at any time. If the Attorney General or Commission advises the Secretary of an intent to offer advice on the application, then such advice must be provided the Secretary within 45 days of the date the Attorney General or Commission received from the Secretary a copy of the proposed certification. In the case of the Attorney General or Commission notifying the Secretary of Commerce of his intention to offer formal advice on the 60th day after the certificate has been filed the formal advice must be given by the 90th day, since the proposed certificate was tendered to each agency on the 45th day. The extension of time afforded under section 4(b) applies only to the granting of the certificate and not to the time during which the Attorney General or Commission is obligated to act.

Mr. STEVENSON. Would the Senator yield for a question on section 4(b)(1)?

Mr. DANFORTH. Yes.

Mr. STEVENSON. What is the purpose of the last sentence of section 4(b)(1)? Is it not the intent of the author of this title that the two respective antitrust enforcement agencies establish a process similar to that utilized for enforcement of the domestic antitrust laws whereby they will reconcile any potential conflict as to which agency will enforce its respective law against a given company or industry in a manner so that all these concerned know that one or the other agency will assume primary jurisdiction?

Mr. DANFORTH. Yes, that is the intent.

Mr. STEVENSON. I thank the Senator.

Mr. DANFORTH. Mr. President, section 4(b)(2) of the act provides that an association may request expedited consideration on its application. The time constraints in section 4(b)(1) must still be honored but it is expected that if a need is demonstrated justifying expedition than all affected agencies will act in due speed.

Section 4(b)(3) provides a mechanism whereby an association whose application for certification or amendment thereto is denied is to be afforded a hearing with respect to that determination pursuant to section 557 of title 5 of the United States Code.

Section 4(c) of the act requires that after certification, if there occurs a material change—meaning something more than inconsequential—related to the association or trading company's membership, trade, trade activities or methods of operation, then an affirmative duty on the part of the association or company exists to report the change to the Department of Commerce. At the time the report is made the association or company may request that its certification be amended. Under section 4(c) if the request for an amendment to the certification is reported by the association or company within 30 days of the fact of the change the antitrust immunity provided by the act continues uninterrupted if the material change subsequently becomes incorporated into the certification through approval by the Secretary of Commerce. The decision as to whether the 30-day test has been met is within the discretion of the Secretary who shall state such when acting upon the request for an amendment to the certification. It should be noted that any interruption in the period of the antitrust immunity occasioned by the failure to notify the Secretary of a material change within the 30-day period does not affect the scope of the underlying certification except as to that part relevant to the material change. One final comment concerning section 4(c) is necessary. The request to obtain certification for a material change must be made within the 30-day period after the change occurs. The decision by the Secretary to accept the request and approve the change is not required to be made within the 30-day period.

Under section 4(d) the Secretary, after notification to an association or trading company and after affording it a hearing, may require that the association or company amend its organization or methods of operation to correspond to its grant of certification. Further, if the Secretary determines that the eligibility criteria of section 2(a) of the act are no longer met, the Secretary must either revoke the certification or himself make such amendment to the certification to satisfy the eligibility criteria of the act.

Mr. President, section 4(e)(1) authorizes either the Department of Justice or the Federal Trade Commission to bring an action to invalidate, in whole or in part, the certification granted to an association or trading company on the grounds that the eligibility criteria of section 2 of the act are no longer being met. Once an association or trading company's export trading activity has been certified under the act, the only action provided by law against the association, trading company or their respective members would be either a self-initiated action by the Secretary under section 4(d) of the act or an action by the Department of Justice or Federal Trade Commission under section 4(e) of the act.

Mr. HEINZ. Will the Senator yield for a question on section 4(e) of the act?

Mr. DANFORTH Yes.

Mr. HEINZ. Would a private party have a cause of action against a Webb association, trading company or their respective members under the Federal, or for that matter, State antitrust laws for injury to it?

Mr. DANFORTH. Section 4(e)(3) of the act provides that only the Department of Justice or the Federal Trade Commission has standing to bring a cause of action in court against a trading company or Webb association for violation of section 2 of the act. Therefore, apart from the complained against activity being ultra vires to the certification, a private party has no standing to bring suit. However, after a certificate has been revoked or invalidated, a private party could have standing to bring an action under the antitrust laws based on activities subsequent to the revocation or invalidation. I would also point out that a private party who may be "aggrieved by an order of an appropriate banking agency" pursuant to section 105(e)(1) of S. 2718 (Title I of the legislation) may not employ the broad standing provision of section 105(e)(1) in order to obtain standing against an export trading company or association with respect to its export trade, trade activities and methods of operation.

Mr. HEINZ. I thank the Senator.

Mr. DANFORTH. Under section 4(e)(1), before the Department of Justice or Federal Trade Commission may sue to invalidate a certification, it is required to notify the affected parties 30 calendar days in advance. It is anticipated that this 30-day period will allow sufficient time for the parties to resolve their differences, if at all possible. The 30-day notification period is not applicable to an action seeking a restraining order under section 4(e)(2).

The authority of the district court under an action for invalidation is to consider the issues de nova. The only issues that are before the court are whether the requirements of section 2(a) of the act, the eligibility criteria, are being complied with by the association or trading company. While the Secretary of Commerce must consider the requirements of section 2(a) and determine that the activities of the association or trading company will serve a specified need in promoting the applicable export trade in order to issue a certificate, the specified need determination of the Secretary is not an issue which is subject to consideration by the district court in a section 4(e)(1) action.

The district court in a section 4(e)(1) action may either issue an order invalidating the certificate, after which the association or company may continue to exist but does so without the protection of the antitrust immunity of section 2(b) of the act, or require the association or company to modify its organization or methods of operation in order to comply with the requirements of section 2(a) of the act.

Under section 4(e)(2), during the 30-day period the effective date of the grant of certification is held in abeyance, the Department of Justice or Federal Trade Commission may seek an applicable order prohibiting the certificate from taking effect. It is anticipated this right of action granted by section 4(e)(2) will be used sparingly. This provision for a temporary restraining order or prohibition is applicable to the issu-

ance of a certificate pursuant to section 4 of the act. Further, the common law requirements applicable to the granting of either a temporary restraining order or preliminary injunction must be met by the moving party before the court can issue such an order. Congress means for this not to be an easy burden to overcome.

The provision for the restraining order or prohibition was added at the request of the Department of Justice. It exists as a safety valve where, in the opinion of the antitrust enforcement agencies of our Government, the Secretary of Commerce intends to issue a certification to either a Webb association or a trading company and there exists, on the face of the certification, obvious violations of section 2 of the act.

The sole issue before the court is whether on the face of the certification there exists such obvious violations of section 2 of the act that a restraining order or prohibition must be issued.

Mr. President, section 5 of the act mandates that within 90 days after enactment, the Secretary of Commerce, after consulting with both the Department of Justice and the Federal Trade Commission, publish proposed guidelines. The guidelines are to relate to the process by which the Secretary of Commerce will reach his determinations under section 4 relative to whether the requirements of section 2 of the act are being met. The guidelines shall be periodically reviewed and revised where warranted.

Sections 6 and 7 of the act are self-explanatory. Section 9 of the act requires that portions of applications, amendments, and annual reports that contain trade secrets or confidential business or financial information, which if disclosed could competitively harm the party submitting the information, be held confidential and not disclosed except as provided under section 9(b). The latter section, under specific circumstances, allows disclosure to the Attorney General or Federal Trade Commission. Sections 10, 11, and 12 of the act, I believe, are also self-explanatory.

Mr. President, in September 1978, President Carter announced his initial steps toward the formulation of a coordinated national export policy. At that time, he called for a reduction of domestic barriers to exports. He urged that the laws and policies affecting the international business community, including the antitrust laws, be administered firmly and fairly but with "a greater sensitivity to the importance of exports than has been the case in the past." S. 2718 seeks to give some teeth to that proclamation. Particularly, the changes in the Webb-Pomerene Act that we advocate will assure a more hospitable attitude toward those whose important task it is to push American goods and services abroad. Yet, at the same time the provisions which we offer for consideration today are tough enough to allow the appropriate authorities to uncover and terminate any domestic anticompetitive spillover from the operations of export trade associations or trading companies.

Mr. President, this bill alone is not going to solve the problem of our trade deficit. It is only a step, but it is a significant step in the right direction.

UP AMENDMENT NO. 1529

(Purpose: To include non-profit service organizations in the definition of export trading companies and to encourage the involvement of small, medium-size and minority businesses in export activities)

Mr. STEVENSON. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1529.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 22, insert after "services", the following new language: ", particularly by small, medium-size and minority concerns,".

On page 5, line 10, insert after "company", the following new language: ", whether operated for profit or as a non-profit organization,".

On page 6, line 4, at the end of the sentence delete the period and add the following new language: ", whether operated for profit or as a non-profit organization.".

On page 9, line 16, insert after "company," the following new language: ", whether operated for profit or as a non-profit organization,".

On page 14, line 7, insert after "concerns" the following new language: "(with special emphasis on small, medium-size and minority concerns)".

On page 17, line 5, strike out "smaller and medium-sized" and insert in lieu thereof "small, medium-size and minority".

On page 19, line 5, insert after "guarantees," the following new language: "and operating grants to non-profit organizations,".

On page 19, line 10, strike out "or" and insert in lieu thereof a comma.

On page 19, line 11, insert after "medium-size" the following new language: "and minority".

On page 20, line 10, immediately preceding the word "Guarantees" insert the following new language: "The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size and minority businesses or agricultural concerns.".

On page 23, line 20, insert after "corporations" the following new language: ", whether operated for profit or organized as non-profit corporations,".

Mr. STEVENSON. Mr. President, if I am granted the floor, I will offer a series of amendments all of which, I believe, are noncontroversial, and most of which are technical and clarifying.

This is such an amendment. It simply clarifies the definition of an export trading company and an association under the Webb-Pomerene Act to make it clear that not-for-profit organizations can be trading companies. This will permit local and State nonprofit trade centers to participate in export development activities through the trading company structure.

The amendment will be of particular value to small- and medium-sized and the minority businesses which do not now sell goods abroad but which could, with this medium, engage in export activities.

It insures that minority businesses will participate in export development by making them eligible for EDA and SBA loans and guarantees extended to export trading companies.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

Mr. PROXMIRE. I am sorry, I missed that. This is an amendment the Senator is offering, will he identify the amendment?

Mr. STEVENSON. It is an unprinted amendment.

Mr. PROXMIRE. In the first place, this amendment, as I understand it, in approval standards places particular emphasis on small- and medium-sized and minority concerns and, as thus, is an improvement in the bill. I criticized the bill before because it did not have this in it. I think this represents an improvement.

Is it in the standards for approval of the application that the focus must be on small-, medium-sized, and minority concerns?

Mr. STEVENSON. Yes, it also makes it clear that not-for-profit organizations can be trading companies. It clarifies the definition in that respect which otherwise is ambiguous. That is all it does.

Mr. PROXMIRE. Does it indicate if the application is not focused on small-medium-sized, and minority and not-for-profit concerns that the application will not be approved?

Mr. STEVENSON. No, it does not do that. The applications in question are to EDA and SBA. It simply underscores the public interest in providing assistance to minority businesses without making any changes in the underlying laws with respect to EDA and SBA and their authorities to support in the case of SBA all small businesses, and in the case of EDA all businesses.

Mr. PROXMIRE. I misunderstood. When I said I favored the amendment, I understood this affected the section for approval. Otherwise it just seems to be rhetoric. It seems to say that we favor small, medium-sized, and minority concerns but we are not going to insert it into our criteria for approval and, therefore, the bill still does not provide effective protection to make sure that this would promote small, medium-sized, and minority concerns which, as we know, provide a big potential for exports, but have been neglected because they do not feel they have the financing or the expertise.

Mr. STEVENSON. Well, Mr. President, it does also apply to applications to the appropriate Federal banking agencies. It does so on page 14 of the bill, making it clear that one of the criteria to be applied by such agencies is the benefit for minority business. But it does not confine all export trading companies to minority trading companies.

Mr. PROXMIRE. Well, supposing an application came along that did not in-

volve small, medium-sized, and minority concerns. It is a big bank and it is a large firm. Would they be able to—would the approval go ahead anyway?

Mr. STEVENSON. If they meet all of the criteria, yes. The principal beneficiaries would be small and medium-sized businesses.

Mr. PROXMIRE. How is that determined if they are dealing with a large firm?

Mr. STEVENSON. Because the application——

Mr. PROXMIRE. That means if a large firm buys some supplies from a small business or minority business they would qualify, some materials or supplies or whatever, as a subcontractor?

Mr. STEVENSON. The trading companies, regardless of who has investments in the trading companies, will be serving all American industry. The principal beneficiaries of those trading companies, including those which are likely to be most successful and active, that is to say, the bank-controlled trading companies, will be small and medium-sized businesses because they otherwise are without the means with which to sell their goods in foreign markets. That is what the trading companies do. That is the purpose of the legislation.

Mr. PROXMIRE. Then if there are no benefits demonstrable to small business, the application should be denied?

Mr. STEVENSON. In every instance there are going to be benefits to small business.

Mr. PROXMIRE. Must that be demonstrated?

Mr. STEVENSON. Even if the customer of the trading company is the largest American company, it has small business suppliers who will be indirect beneficiaries.

Mr. PROXMIRE. Then I cannot see that this amendment does anything at all, except to indicate we are all in favor of small business.

Mr. STEVENSON. It does not. It is purely, as I said, a clarifying, technical amendment.

It puts emphasis on support for minority businesses: it makes it clear that not-for-profit organizations can be trading companies.

Mr. PROXMIRE. Well, Mr. President, I certainly will not oppose the amendment. But, as I think our colloquy has indicated, it does not have a great deal of force. It certainly does not, as the Senator frankly admits, mean that small business, medium-sized business, and minority concerns are going to have any particular advantage they would not have otherwise.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

Mr. STEVENSON's amendment (UP No. 1529) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1530

(Purpose: To extend the Notification Time Period for additional bank investment in subsidiary export trading companies—§ 105(b)(2))

The PRESIDING OFFICER. Is there further amendment?

Mr. STEVENSON. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1530:

On page 11, line 13, strike "sixty" and insert in lieu thereof "ninety".

Mr. STEVENSON. Mr. President, under section 105(b)(2) of S. 2718, a banking organization with a controlling interest in an export trading company must give the appropriate bank regulatory authority 60 days prior written notice before it makes any additional investment in a trading company's subsidiary or before the trading company's subsidiary engages in any new line of activity.

As a result of advice by the Comptroller and the Chairman of the Federal Deposit Insurance Corporation, I am offering this amendment to lengthen that notification period by 30 days so that the total period would be 90 days. That should be sufficient to afford the regulatory agency adequate time for the consideration of any such proposals.

Mr. PROXMIRE. Mr. President, will the Senator yield on this amendment?

Mr. STEVENSON. Yes.

Mr. PROXMIRE. Mr. President, is there a position taken by the regulatory agencies if they ask for the additional time?

Mr. STEVENSON. Yes.

Mr. PROXMIRE. Do they say 90 days would be adequate?

Mr. STEVENSON. That is what they requested.

Mr. PROXMIRE. They requested that. That was the Federal Reserve, the Comptroller, and FDIC?

Mr. STEVENSON. I think the FDIC was the only one that asked for this and it is getting what it asked for. This is the same period already provided for bank holding company investments under section 4(c)(8) of the Bank Holding Company Act.

Mr. PROXMIRE. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois (Mr. STEVENSON).

The amendment (UP No. 1530) was agreed to.

UP AMENDMENT NO. 1531

(Purpose: To extend the Approval Period of Controlling Investments by banks in export trading companies—§ 105(b)(3))

Mr. STEVENSON. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1531.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 12, lines 8-9, strike "the ninety-day period which" and insert in lieu thereof "a period of one hundred and twenty days, which period".

Mr. STEVENSON. Mr. President, under section 105(b)(3) of S. 2718, the appropriate Federal banking agencies have 90 days to act on any application by a banking organization to invest more than $10 million in an export trading company or to acquire a controlling interest in an export trading company.

This amendment responds to suggestions by the Comptroller of the Currency and the chairman of the Federal Deposit Insurance Corporation. It extends that approval period to 120 days. In this case, the approval period is 30 days longer than the comparable period provided under the Bank Holding Act. But we are once again trying to be responsive to the interests and the desires of the regulatory agencies. I do not know of any opposition to this amendment.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, as I understand it, this amendment extends from 90 days to 120 days a period for what?

Mr. STEVENSON. The approval of applications by banks for controlling interest in trading companies.

Mr. PROXMIRE. Approval of the application by the Federal Deposit Insurance Corporation?

Mr. STEVENSON. Whatever the regulatory agency is.

Mr. PROXMIRE. Did the Senator say this was the request of the FDIC?

Mr. STEVENSON. And the Comptroller.

Mr. PROXMIRE. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois (Mr. STEVENSON).

The amendment (UP No. 1531) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2279

(Purpose: To prohibit speculation in securities and foreign exchange by export trading companies in which banks may invest (section 105(c)(3)))

Mr. STEVENSON. Mr. President, I call up amendment No. 2279.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an amendment numbered 2279.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 13, insert after "commodities contracts" on line 14, the following new language ", in securities, or in exchange,".

Mr. STEVENSON. Mr. President, section 105(c)(3) of the bill, which was recommended by the Board of Governors of the Federal Reserve System, requires a banking organization that owns any voting stock of an export trading company to terminate its ownership of such stock if the export trading company speculates in commodities. The chairman of the FDIC recommended that section be broadened to preclude any speculation in foreign exchange and securities.

I believe the distinguished chairman of the Banking Committee has expressed similar concerns. This amendment is intended to alleviate the concerns which I believe he has expressed and which have been expressed by the chairman of the Federal Deposit Insurance Corporation.

It makes it clear that a banking organization would have to terminate its stock interests in a trading company if that trading company took positions in securities or exchange, other than, of course, as necessary in the ordinary course of its business operations.

Mr. PROXMIRE. Will the Senator *yield?*

Mr. STEVENSON. Yes.

Mr. PROXMIRE. First, as far as the amendment itself is concerned, as I read it, it says:

On page 13, insert after "commodities contracts" on line 14, the following new language ", in securities, or in exchange,".

Is there an omission there? Should that be "in foreign exchange"?

Mr. STEVENSON. That might make it clearer. It is certainly intended to be foreign exchange. We are trying to be comprehensive here in order to include foreign exchange. But "foreign exchange" is more descriptive and I guess we would lose nothing by changing it from "exchange" to "foreign exchange."

Mr. PROXMIRE. I think that would be a little more helpful.

The Senator has indicated, in response to our criticism, that this amendment would require approval for a continuing position by a bank in a commodity contract, for approval for them to engage in a commodity contract before a bank, for example, could buy a certain amount of wheat or grain, or whatever. In connection with an export trading company, it would need approval. Is that what this amendment does?

Mr. STEVENSON. The Senator is correct. If it is a bank-controlled trading company, before it took any such position for speculative reasons, as opposed to the ordinary course of its trading company activities, it would have to obtain approval.

Mr. PROXMIRE. It simply would limit it, then, for speculative reasons. However, as the Senator has pointed out, if this is for ordinary business transactions, it would still not meet my fundamental criticism, which is that the banks have no expertise in this area. They have gotten into trouble in speculating in real estate. Here they would be speculating in commodities.

The speculation, of course, can be defended as being just the ordinary course of operations, depending on the kind of trading company that they have purchased. This would obviously be helpful, but it would seem to me it would not eliminate the fundamental objection, which is that banks would still take positions in the ordinary course of business through the companies they own in commodities.

Mr. STEVENSON. The bill simply gives the agencies the authority to determine what is speculation and what is not. The trading company, to be successful, obviously has to acquire title to goods, including commodities. One of the purposes is to create intermediaries which can absorb exchange rate fluctuations. That means that they will be dealing in foreign exchange. But we prohibit—the agencies cannot permit because we prohibit—speculation in foreign exchange or in securities. Because there is a need to distinguish between perfectly legitimate business and ordinary activities in the conduct of trade, the agencies will have regulatory authority to determine which is which. Should a trading company exceed its authority under the law, as well as the regulations to come, it could be divested. A bank-controlled trading company could be divested of all investment by the bank.

Mr. PROXMIRE. The language on page 13 reads:

A banking organization that owns any voting stock or other evidences of ownership of an export trading company shall terminate its ownership of such stock if the export trading company takes positions in commodities or commodities contracts other than as may be necessary in the course of its business operations.

This will insert the additional language "in securities or in exchange." Is that right?

Mr. STEVENSON. Yes.

Mr. PROXMIRE. So the problem which it seems to me presents itself here is, who will determine whether or not the bank has terminated its ownership? Is this by a banking regulatory body, the Federal Reserve, the FDIC, or the Comptroller?

Mr. STEVENSON. First of all, the bank in its application to the regulatory agency has to describe all the activities of the trading company. With respect to those activities, including—and this is explicit on page 14 of the bill—including taking title of goods, wares, merchandise, commodities, and so on, "the appropriate Federal banking agencies shall establish standards designed to insure against any unsafe or unsound practices."

We have the law, we will have the regulations, we will have the application and the reaction from the regulatory agency which can impose additional standards, and, finally, in addition to all of those prohibitions, the threat of divestiture as a result of action by the appropriate agency if, in violation of any of those provisions, the bank-controlled trading company speculates, that is to say, takes title, deals in exchange, commodities, or securities in a way that is speculative and not in the ordinary course of its trading company business.

I do not know what more can be done than that. If there is anything more that can reasonably be done to accomplish the objective, which is to encourage legitimate trading activities and not speculation, we will be happy to consider it. We have gone as far as we know how to go and have gone as far as the regulatory agencies have suggested that we go. On this point, at least, I do not know of any problem from the Federal Deposit Insurance Corporation, the Federal Reserve Board, or the Comptroller.

(Mr. BRADLEY assumed the chair.)

Mr. PROXMIRE. Let me see if I understand this. Suppose there is a bank or a bankholding company. Say there is a bank, which is under the jurisdiction, for purposes of this legislation, of the Federal Deposit Insurance Corporation. Would they have the Federal Deposit Insurance Corporation make this judgment as to whether or not they would have to terminate their ownership, or would all three of the regulatory agencies have to make the determination?

Mr. STEVENSON. It is the appropriate Federal regulatory agency, which in the case offered by the Senator, would be the FDIC. We assume, as in the case of all banking regulation, these agencies would get together through the medium of the examination council and establish procedures and regulations which are uniform.

Mr. PROXMIRE. That is a good presumption. That is not required in the legislation. It may or may not happen. As the Senator knows, in the real world what can happen in this legislation is that the Federal Deposit Insurance Corporation with respect to a State nonmember bank may have one view, the Comptroller with regard to a national bank may have an entirely different view, and the Federal Reserve Board with regard to a State member bank would have a different view. So in the way the regulations have operated to date, in spite of the fact that they have been trying to work together, they often provide conflicting positions.

Mr. STEVENSON. Yes. Well, this bill is not intended to overhaul the regulation of banks. It accepts the existing structure for the regulation of banks. I know the Senator from Wisconsin has complaints about that structure, and I think he makes a strong case. But I do not think this is the place to resolve these large questions about what institutions regulate the banks.

Mr. PROXMIRE. I think it is a reasonable position. The only objection that this Senator would have is that here, again, we would have a temptation on

the part of the regulator to compete on the basis of laxity. As Arthur Burns said when Chairman of the Federal Reserve Board, there is competition in laxity. Here is another opportunity for them to attract a bigger constituency.

Mr. STEVENSON. The law as it stands now defines which agency has the jurisdiction. The Congress has responded to the concerns of the Senator by writing into law the examination council, the very purpose of which is to eliminate a competition in laxity and to establish uniformity through cooperation between all these agencies. So far as I know that system is working well.

Mr. PROXMIRE. Would the Senator give the Examination Council the authority to administer this determination? The statute then would assure that we would have uniform regulation.

Mr. STEVENSON. The Bank Examination Council is not itself a regulatory agency. It is more of a method for cooperation among the regulatory agencies. I do not see how we would do that. If the Senator has in mind some expression of intent, that is to say some language which might indicate that it is our intention for these agencies to work out whatever differences exist between them through the Bank Examination Council, then, yes, in fact that is our expectation and our hope. If we can do anything to fulfill it by being more explicit in the law, I think that should be considered.

Mr. PROXMIRE. We did it in the depository deregulation agency that we set up for handling regulation Q. We gave them this kind of coordinating authority and it worked. Why could we not do it in this case for the regulatory council?

Mr. STEVENSON. Offhand, Mr. President, I have no problem. Indeed, I think it makes a lot of sense. Maybe we should take a little time to try to work out some language which would accomplish the objective which I believe we both share.

Mr. PROXMIRE. Mr. President, would the Senator be willing to—we can do this one of two ways. We can have a quorum call and have the staff work it out or we can lay this amendment aside and proceed to another amendment. Meanwhile, *it would not delay the Senate. Either* way the Senator wants to operate is fine with *me.*

Mr. STEVENSON. Mr. President, it occurs to me that the Senator from Wisconsin might be most interested—and I would be, too—in an amendment that requires these *agencies to cooperate* through the Bank Examination Council *with respect to all of their responsibilities* under the bill. Maybe, therefore, we ought to act on this amendment and try to prepare an additional amendment which would have that *effect.*

Mr. PROXMIRE. That is fine. I would have no objection to that. We can act on this amendment, with the understanding that we shall work on another amendment that we can put in that would require greater coordination for the whole bill.

Mr. STEVENSON. Mr. President, I think the Senator has made an excellent suggestion. I shall be happy to work with him on it.

Mr. President, this has been discussed with the minority. I do not know of any opposition to it.

Mr. DANFORTH. There is no objection, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2279) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENSON subsequently said: Mr. President, I ask unanimous consent that on amendment No. 2279, approved by the Senate, that the amendment be modified by inserting on page 13, line 14, the word "foreign" before the word "exchange."

This carries out the understanding earlier with the Senator from Wisconsin which we neglected to take care of at the time.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is so modified.

AMENDMENT NO. 2280

(Purpose: To define the scope of activities of export trading companies in which banks may invest section 105(a)(13))

Mr. STEVENSON. Mr. President, I call up amendment 2280 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes amendment numbered 2280.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 9, strike lines 14 through 18 and insert in lieu thereof the following new definition of export trading company:

"(13) for the purposes of this section, the term 'export trading company' means a company which does business under the laws of the United States or any State and which is exclusively engaged in activities related to international trade: *Provided, however*, That any such company must also either meet the definition of export trading company in section 103(a)(5) of this Act, or be organized and operated principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this Act: *Provided, further*, That nothing in this Act shall be construed to permit any such company, for purposes of this section, (A) to engage in the business of underwriting, selling, or distributing securities in the United States, or (B) to engage in manufacturing or agricultural production activities in the United States.".

Mr. STEVENSON. Mr. President, it has been suggested by some, including, I believe, the distinguished chairman of the Committee on Banking, that export trading companies could, theoretically, enable a bank to engage in nonbanking and nontrading activities. It has been suggested that a bank-owned export trading company could engage in nontrading activities—that is to say, activities unrelated to export trade. That is not our intention at all. I believe this amendment will make our intention clear.

Mr. President, the amendment would strike the definition of export trading company in section 105(a)(13) and insert in lieu thereof a definition which provides as follows:

First, to be an eligible investment for a banking organization under section 105, an export trading cmopany must be "exclusively" engaged in activities related to international trade. The bill had provided that it must be "principally" engaged in such activities.

This language reflects the recommendation of the Comptroller of the Currency that all activities of bank-owned export trading companies should be related to international trade. While this would include barter, import, so-called third-country trade, it would clearly not include manufacturing, agriculture, securities, or other such activities.

Second, while the bank-owned trading company must be exclusively engaged in international trade activities, it must also meet the other exporting tests that are now in the bill. Those tests are found in section 103(a)(5).

The amendment removes any doubt that the definition of trading companies specifically provides that no bank-owned trading company can engage in the securities business in the United States or anywhere else, or engage in manufacturing or agricultural production. These prohibitions are intended to reaffirm the basic policies of the Glass-Steagall Act and the Bank Holding Company Act.

Mr. President, I emphasize that this definition of trading companies applies only to bank-owned trading companies. Other trading companies could be involved to some extent in nontrading activities. I am hopeful, Mr. President, that this amendment does respond to the concerns which have been expressed to the effect that, as drafted, the bill might *permit banks to engage* in nonbanking and nontrade activities. That was not *our intention.*

Mr. President, I modify the amendment to eliminate, on line 12 and on line 13, the phrase "in the United States" to make it clear that these nontrading bank activities which are proscribed are proscribed worldwide.

I *send that modification to the desk.*

Mr. PROXMIRE. Mr. President, before the Senator sends the modification to the desk, I wish to ask a question.

I have the printed amendment before me here. In my printed amendment, on page 2, lines 3 and 5, it is stated "or distributing securities in the United States," and "to engage in manufacturing or agricultural production activities in the United States."

Do those references which confine the activity to the United States mean that it cannot be engaged in something other than international trade?

Mr. STEVENSON. That is correct. The amendment has been modified in two places, to make it clear that the underwriting, selling, distributing of securities

is proscribed no matter where it takes place—United States or abroad.

Mr. PROXMIRE. That is fine. That is on page 2, lines 3 and 5, "in the United States" is deleted, is that correct?

Mr. STEVENSON. On page 2 of the printed amendment, yes, the Senator is correct.

The PRESIDING OFFICER. The amendment is so modified.

The amendment as modified is as follows:

On page 9, strike lines 14 through 18 and insert in lieu thereof the following new definition of export trading company:

"(13) for the purposes of this section, the term 'export trading company' means a company which does business under the laws of the United States or any State and which is exclusively engaged in activities related to international trade: *Provided, however*, That any such company must also either meet the definition of export trading company in section 103(a)(5) of this Act, or be organized and operated principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this Act: *Provided, further*, That nothing in this Act shall be construed to permit any such company, for purposes of this section, (A) to engage in the business of underwriting, selling, or distributing securities, or (B) to engage in manufacturing or agricultural production activities."

Mr. STEVENSON. Mr. President, this amendment has also, I believe, been cleared on the minority side. I do not know of any opposition to it.

Mr. DANFORTH. Mr. President, the amendment is acceptable to the minority.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

The amendment (No. 2280) as modified was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 2280, AS FURTHER MODIFIED

Mr. STEVENSON subsequently said: Mr. President, it has been brought to my attention that amendment No. 2280 as modified, to this bill, already approved by the Senate, contained an inadvertent error. I ask unanimous consent that that amendment be further modified to add the words, "whether operated for profit or as a nonprofit organization" after the words "international trade" and before the colon.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, much of the discussion this morning has related to the question of the so-called banking sections of the pending legislation. There is pending at the desk, and after Senator PROXMIRE has called up his amendment, having to do with the banking subject, I, on behalf of myself, Senator PROXMIRE, Senator KENNEDY, and Senator CHURCH, will call up an amendment having to do with the antitrust aspects of this legislation.

I. INTRODUCTION

Mr. President, at the outset let me say that I share the goal of this legislation: the creation of a workable competitive framework for American businesses engaged in export trade.

But I also strongly believe in our national commitment to free and open competition as the guiding force of our economic system. To preserve this system, we must be extremely careful before granting or expanding exemptions from our antitrust laws.

One such exemption which has been on our books since 1918 is the Webb-Pomerene Act: Webb-Pomerene grants immunity from the antitrust laws to associations engaged solely in export trade so long as such associations do not substantially lessen competition within the United States or restrain the export trade of any domestic competitors.

II. S. 2718—WHAT IT DOES

Title II of S. 2718 expands the Webb-Pomerene exemption. First it makes the provisions of the act explicitly applicable to the exportation of services. Second, it expands and clarifies the act's exemption for export trading companies. Third, it transfers the administration of the act from the Federal Trade Commission to the Department of Commerce.

It is in that particular last area, particularly, that there is concern as to the propriety and rightness of the legislation as it comes to the floor.

S. 2718 gives the Secretary of Commerce the responsibility for determining whether the antitrust exemption will be granted pursuant to the certification process set out in the bill. In the event that the Attorney General or the FTC believe that the granting of such an exemption would substantially lessen competition in U.S. commerce, contrary to the eligibility requirements of the bill, they can so advise the Secretary of Commerce. But the important point is that the Secretary is free to disregard that advice and grant the exemption. That provides a wide hole in the entire antitrust laws.

It so happens that the present Secretary of Commerce is an extremely able and dedicated public servant. It is to the administration's credit that they have been able to bring him on board in that role and to accept those responsibilities. I have tremendous respect for him. He is not only an able public servant, he is my good friend, and I think the world of him.

But the legislation is not applicable to any one particular Secretary of Commerce. Although I would be inclined to have confidence in this particular Secretary of Commerce, the fact is that we must draft legislation and pass legislation that is applicable regardless of who may be the incumbent Secretary of Commerce.

So what we find is that the Secretary of Commerce is in the position to grant the antitrust exemption and the only recourse left to the Attorney General or the Commission is to bring an action within 30 days in Federal district court seeking to invalidate the granting of the exemption.

Mr. President, there are many things I am for and against. But there is one thing I know I am very strongly against. That is, more litigation in our courts. We need no more of that.

It is not enough to say that there is recourse for the Attorney General and the FTC to be able to go into court, because the Government should not be fighting one arm of Government against the other. Further, Commerce Department approval carries with it immunity from suits by private parties or State attorneys general for failure of the export companies to meet the eligibility requirements of the act.

III. OUR AMENDMENT

Our amendment leaves the nature and scope of the antitrust exemption granted by S. 2718 intact. It does, however, alter the procedural framework:

First, instead of giving the Secretary of Commerce exclusive authority to determine the grant of an antitrust exemption as in the current bill, our amendment gives that authority to the Secretary in conjunction with the Attorney General or the Federal Trade Commission. If the Attorney General or the Commission believe that granting the exemption would substantially restrain competition contrary to the eligibility provisions of S. 2718, the Secretary is precluded from granting the exemption.

Now, is it not right, is it not proper, that the arm of Government, in this case those arms of Government, both the Antitrust Division or the Attorney General, as well as the Federal Trade Commission, should have the authority to pass on the question of whether or not there should be an antitrust exemption, and that is all that is being attempted in this effort by our amendment.

It is a major difference to talk about there being an advisory opinion, because my good friend from Illinois, the author of this legislation, recognizes that there is a propriety in having the Attorney General and the FTC as a part of the process.

But, more than being a part of the process, it is a question of having validity to the position taken by the Attorney General or the FTC, where there is an antitrust question involved.

Second, it eliminates the authority of the Attorney General or the Commission to seek to invalidate, through Federal court action, the Secretary's granting of the antitrust exemption. By giving the Attorney General or Commission a direct say in the decisionmaking process, such litigation authority is not necessary. We have effectively eliminated the need to go to court.

Third, it eliminates the authority of the Attorney General or Commission to seek to invalidate the antitrust exemption certification through Federal court action in situations where the Attorney General or FTC originally had no objection to the grant of such an exemption.

That, too, is proper; because if they are not going to object in the first instance, it is inappropriate that they go into court once the decision has been made available to those business organizations involved.

IV. REASONS FOR THE AMENDMENT

The main thrust of our amendment is, of course, the grant to the Attorney General or the FTC of what, in effect, is a veto power over the grant of any antitrust exemption.

S. 2718 quite properly charges the Secretary of Commerce with the responsibility of encouraging and promoting the development of export trading companies. Yet, it also gives him authority to determine whether our antitrust laws should be enforced. It seems to us inherently difficult, if not impossible, to pursue both functions fairly and effectively.

The Attorney General and the Commission both have substantial expertise about competition and antitrust issues and they are free from any responsibility or interest in either promoting or discouraging export trading associations or companies. If an exemption and immunity from our antitrust laws is to be granted, it should be granted by the agency or agencies responsible for interpreting and enforcing those laws. They also have the greatest expertise in analyzing the competition issues set forth as eligibility requirements under the bill.

We are confident that the Attorney General and the Commission will not take a prosecutorial bias into their determinations. We believe they will fully and fairly fulfill their statutory responsibility consistent with the intent of Congress; namely, to grant an antitrust exemption where the activities of the export company will not substantially lessen competition in the United States or anticompetitively injure domestic competitors.

By giving the Attorney General or the Commission authority in the granting of the antitrust exemption, we eliminate the need for extending authority to litigate to the Attorney General to seek Federal court reversal of the Secretary's decision. We thereby eliminate the anomaly of two of our most important executive agencies going into court, one taking one position on behalf of the Government and the other taking a position diametrically opposed to that.

Mr. President, our Government has enough matters in court and our Government has enough problems on a day-by-day basis that we should not be providing a way to expend thousands and perhaps hundreds of thousands of dollars of the taxpayers' money while one part of the Government goes into court and takes one position and the other side of Government goes into court and takes another position.

Is it not right, is it not appropriate, that the two arms of Government that traditionally have been given antitrust authority, the two arms of Government that have been most concerned about free competition, should have the right to participate and actually to be involved in the determinative question of whether or not an antitrust exemption should exist?

However, if the Attorney General or the Commission has authority over the grant of the antitrust exemption, something additional will be added. It will be that businessmen would have the certainty that a decision granting the exemption will not subsequently be overturned by either the Attorney General or the Commission. As a matter of fact, is it not right that once a decision is made, it become a finality?

The fact is that under the present legislation, if the Secretary of Commerce decides that there should be an exemption and the FTC or the Attorney General wants to question that decision, they have the right to go into court after the fact, and the businessmen will never know what the answer is, until the court finally rules on it.

I believe that the amendment we are proposing would very much short circuit that entire process. It would provide for finality when the Attorney General and the FTC had signed off. But today, if the proposal made by the Senator from Illinois were to become law, there would not be any finality, and, actually, we would be expanding the process many months, perhaps years, into the future.

Because we feel as we do about bringing the issue to a head, we have eliminated the authority of the Attorney General or the Commission to seek to invalidate the exemption in those situations in which they had not opposed it initially.

Mr. President, I am concerned about the public being protected in these circumstances. I represent to the Senate that there is adequate protection to the public in such circumstances, because, under our amendment, the Attorney General retains the right to file an antitrust action where an export company goes beyond the scope of its certified and approved activities and thereby substantially lessens competition. I also point out that the Secretary of Commerce has authority to revoke or modify an exemption certification where that is appropriate.

We also have left intact the appeal process from a negative determination on an application for the antitrust exemption. Our amendment makes it clear that the appeal process contemplated in the bill applies to a negative determination by the Attorney General, or Commission as well as the Secretary of Commerce.

CONCLUSION

In conclusion, I believe that this amendment substantially strengthens this important legislation. It leaves the nature and scope of the proposed antitrust exemption completely intact, but better protects the American people from unfair restraints of trade, and lessening of competition, by modifying the procedural aspects.

Mr. President, at a later point, I will address myself further to the economic consequences that would result from the adoption of the Export Trading Company Act of 1980 in its present form.

We should recognize that this is a serious inroad into the antitrust protection that this Nation has been proud of for so many years. It is an incursion into the antitrust processes and procedures where the FTC and the Attorney General have been involved.

I have tremendous respect for the author of the measure and for his past history of concern for antitrust laws, antitrust protections, and for his concern with respect to export trade.

I share that concern with him in connection with the subject of export trade. I recognize that it is in our Nation's interest that we help American businesses in every way possible in expanding that export trade. I have no quarrel with the basic thrust of the legislation in that respect. But like in so many other areas, sometimes the legislation that is proposed to achieve a particular objective goes beyond the pale just a bit.

In this instance, I believe that it has gone beyond the pale and would break down some of the antitrust concerns which so many Americans share. It is for that reason that at the appropriate time I will call up the amendment that has been introduced by myself, Senator PROXMIRE, Senator KENNEDY, and Senator CHURCH.

Mr. President, I suggest the absence of a quorum.

Mr. DANFORTH. Mr. President, will the Senator withhold that?

Mr. METZENBAUM. Yes.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 2281 (AS MODIFIED)

(Purpose: Technical amendments)

Mr. DANFORTH. Mr. President, I call up amendment 2281, as modified.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH) proposes an amendment numbered 2281, as modified.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 4, delete the word "sourced" and insert in lieu thereof the word "produced" and further on line 5 insert the following after the word "States": ", and".

On page 5, line 6, insert a "," after the word "financing".

On page 23, line 4, delete the word "includes" and insert in lieu thereof the word "means".

On page 23, between lines 5 and 6, insert the following new paragraph (4) and renumber (4) through (10), as numbers (5) through (11) respectively:

"(4) METHODS OF OPERATION.—The term 'methods of operation' means the methods by which an association or export trading company conducts or proposes to conduct export trade.".

On page 24, line 22, insert the phrase ", export trade activities" after the word "trade".

On page 25, lines 4, 8, and 12, insert the phrase "or export trading company" after the word "association" on each line.

On page 26, lines 5 and 6, delete the phrase "with respect to its export trade, export trade activities, and methods of operation".

On page 26, lines 7 and 8, delete the phrase "as relates to their respective" and insert in lieu thereof "with respect to their".

On page 26, line 8, delete the word "or" and insert in lieu thereof the word "and".

On page 26, line 10, delete the second

"the" and insert in lieu thereof the word "this".

On page 26, line 14, delete the word "the" and insert in lieu thereof the word "an".

On page 26, line 16, insert the word "export" after the word "such".

On page 27, line 19, delete the first word "company".

On page 28, line 11, insert the phrase "or export trading company" after the word "association".

On page 28, line 12, insert a "." after the word "activities".

On page 28, line 13, insert the phrase "or export trading company" after the complete word "association".

On page 29, line 6, insert the phrase "or export trading company" after the partial word "ation".

On page 30, line 13, insert the word "and" after the partial word "ation".

On page 30, lines 17 and 18, delete the phrase "that the association or export trading company and its activities".

On page 31, line 16, delete the phrase "notice:and" and insert in lieu thereof the word "noticed".

On page 34, line 11, delete the word "chairman" and insert in lieu thereof the word "Commission".

On page 34, line 15, delete the phrase "the certification" and insert in lieu thereof the phrase "its certificate".

On page 34, line 18, delete the "." after the word "failed".

On page 34, line 22, delete the word "revocation" and insert in lieu thereof the word "invalidation".

On page 35, line 19, delete the word "criteria" and insert in lieu thereof the words "eligibility requirements".

On page 37, line 15, delete the phrase "such Act" and insert in lieu thereof the phrase "the Export Trade Association Act of 1980".

On page 38, lines 16–18, delete in its entirety lines 16 and 17 and the partial word "tion" on line 18.

On page 40, line 9, delete the number "14" and insert in lieu thereof the number "13".

On page 35, line 2, delete the word "and" and insert in lieu thereof the word "or".

On page 37, line 17, delete the number "5" and insert in lieu thereof the phrase "4(a)(1)–(9)".

On page 26, line 14, insert the phrase "in whole or in part" after the word "validation".

On page 31, line 10, insert the phrase "and the petitioning association or export trading company" after the word "Secretary" and further delete the word "his" and insert in lieu thereof the phrase "the Secretary's".

On page 39, line 10, delete the phrase "it to modify its" and insert in lieu thereof the phrase "the association or export trading company to modify its respective".

On page 39, line 10, insert the phrase ", and in so doing afford the association or export trading company a reasonable opportunity to comply therewith," after the word "operations".

On page 39, line 10, insert the phrase", and section 4" and insert in lieu thereof the phrase ", sections 5 and 6" and further on line 4 delete the number "44" and insert in lieu thereof the numbers "45, 46".

On page 34, line 19, delete the word "The" and insert in lieu thereof the phrase "Except in the case of an action brought during the period before an antitrust exemption becomes effective, as provided for in section 2(c).".

Mr. DANFORTH. Mr. President, this amendment is simply in the nature of a technical amendment. It makes various grammatical corrections as technical corrections for the purpose of clarifying the bill. It has been cleared with the majority and minority managers of the bill and I believe all interested parties.

Mr. PROXMIRE. Mr. President, is the amendment of the Senator from Missouri pending?

The PRESIDING OFFICER. The amendment of the Senator from Missouri is pending.

Mr. PROXMIRE. Will the Senator identify the amendment again? I am very sorry. I stepped out of the Chamber momentarily.

Mr. DANFORTH. Yes, amendment 2281 relating to technical corrections.

Mr. METZENBAUM. Mr. President, will the Senator from Missouri yield for a question?

Mr. DANFORTH. I yield.

Mr. METZENBAUM. This amendment, as I understand it, is a technical amendment dealing with the antitrust aspects of the legislation?

Mr. DANFORTH. Yes, it makes certain grammatical changes throughout the bill and clarifying changes with respect to the antitrust portion.

Mr. METZENBAUM. And there is nothing substantive in the amendment?

Mr. DANFORTH. There is nothing substantive in the amendment.

Mr. METZENBAUM. Mr. President, I have no objection to it from an antitrust standpoint and I gather it is that part of the bill that is affected.

Mr. PROXMIRE. I have no objection.

Mr. DANFORTH. I move the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Missouri.

The amendment (No. 2281), as modified, was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2282, AS MODIFIED

(Purpose: To provide for automatic certification of existing Webb-Pomerene Associations)

Mr. DANFORTH. Mr. President, I call up amendment No. 2282, as modified, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH) proposes an amendment numbered 2282, as modified.

Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 32, line 18, redesignate paragraph (3) as paragraph (4), and insert immediately after paragraph (2) the following new paragraph:

"(3) AUTOMATIC CERTIFICATION FOR EXISTING ASSOCIATIONS.—Any association registered with the Federal Trade Commission under this Act as of April 3, 1980, may file with the Secretary an application for automatic certification of any export trade, export trade activities, and methods of operation in which it was engaged prior to enactment of the Export Trade Association Act of 1980. Any such application must be filed within 180 days after the date of enactment of such Act and shall be acted upon by the Secretary in accordance with the procedures provided by this section. The Secretary shall issue to the association a certificate specifying the permissible export trade, export trade activities, and methods of operation that he determines are shown by the application (including any necessary supplement thereto), on its face, to be eligible for certification under this Act, and including any terms and conditions the Secretary deems necessary to comply with the requirements of section 2(a) of this Act, unless the Secretary possesses information clearly indicating that the requirements of section 2(a) are not met.".

On page 37, strike out lines 10 through 19, and insert in lieu thereof the following:

"SEC. 8. TEMPORARY ANTITRUST EXEMPTION FOR EXISTING ASSOCIATIONS.

"(a) ELIGIBILITY.—To be eligible for the antitrust exemption provided by this section, an association must have been registered with the Federal Trade Commission under this Act on April 3, 1980.

"(b) DURATION.—The antitrust exemption provided by this section shall extend only to the existence of an eligible association, and to agreements made and acts done by such association, prior to 180 days after the date of enactment of the Export Trade Association Act of 1980, or, in the event that an eligible association files an application for certification pursuant to section 4 of this Act during such 180 days, prior to the Secretary's determination on such application becoming final.

"(c) EXEMPTION.—Subject to the limitations in subsections (a) and (b), nothing contained in sections 1 to 7 of the Sherman Act shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *Provided*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.".

Mr. DANFORTH. Mr. President, for the information of the Senator from Ohio this does go to the antitrust portion of the bill.

Section 205 of title II adds a new section 8 to the Webb-Pomerene law. Section 8, as presently drafted, provides a procedure for automatic certification under the Export Trade Association Act of 1980 for existing Webb-Pomerene associations if associations request to be certified within 180 days after enactment of such act. Under section 8 existing Webb-Pomerene associations would lose the immunity from the operation of the antitrust laws afforded them under section 2 of the present Webb-Pomerene law on the date of passage of the Export Trade Association Act of 1980. Yet, under section 8, as presently drafted, a Webb-

Pomerene association which seeks certification under the Export Trade Association Act of 1980 would not obtain the immunity afforded it under section 2(b) of that act until it was certified by the Secretary of Commerce. The certification is not retroactive to the date of passage of such act.

Under my amendment, an existing Webb-Pomerene association which requests certification within the applicable time would not lose the immunity from the operation of the antitrust laws provided under section 2 of the present Webb-Pomerene law until a final determination is made pursuant to the provisions of the Export Trade Association Act of 1980.

Under the amendment, new paragraph (3) of section 4(b) provides automatic certification for existing Webb-Pomerene associations which request such certification within 180 days after enactment of the act. Under the amendment, the certification process for existing Webb-Pomerene associations is to comport with the process applicable to other associations seeking certifications under the act, with two exceptions:

First, under paragraph (3) of section 4(b) the Secretary's review of the application for certification is to be summary in nature. Specifically, the Secretary is required to determine whether the application shows "on its face" whether a certificate should issue. It is further stated that unless the Secretary "possesses information clearly indicating that the requirements of section 2(a) are not met"—again, by looking at the application "on its face" and having available the advice of the Department of Justice or Federal Trade Commission—the Secretary must issue the certificate for the export trade, export trade activities and methods of operation that meet the requirements of section 2(a) of the act.

Second, when issuing a certificate pursuant to paragraph (3) of section 4(b) the Secretary need not determine that the association and its activities "will serve a specified need in promoting the export trade of the goods, wares, merchandise or services described in the application." An existing Webb-Pomerene association need not have to demonstrate that its existence is in furtherance of U.S. export trade. Such would be presumed.

The second part of the amendment I am offering strikes section 8 of title II to S. 2718. Under new section 8 it is made clear that an existing Webb-Pomerene association which seeks certification under the Export Trade Association Act of 1980 within 180 days after such act's enactment retains the immunity from the operation of the antitrust laws it had under section 2 of the present Webb-Pomerene law. This is accomplished by reenacting section 2 of such law, as provided under subsection (c) of section 8, but making the immunity provided by subsection (c) applicable only to existing Webb-Pomerene associations that meet the requisites of subsections (a) and (b) of section 8.

The immunity which is carried over by section 8 from the current Webb-Pomerene law is not lost by a Webb-Pomerene association to which it attaches until a final determination is made as to the association's request for certification. For instance, if the Secretary under paragraph (3) of section 4(b) determines not to issue a certificate to an existing Webb-Pomerene association or determines not to certify a method of operation requested in the application, and the association appeals that determination under the provisions of new paragraph (4) to section 4(b), the immunity provided by section 8 continues to attach until a final decision is reached on the Webb-Pomerene association's request for certification.

Mr. PROXMIRE. Mr. President, will the Senator yield on his amendment for a question?

Mr. DANFORTH. I yield.

Mr. PROXMIRE. One of the problems, as the Senator knows, when we amend sections of the bill is that it may make it impossible under the Senate rules to amend that section further. That is why when we have a committee amendment we get unanimous consent that the amendment be treated as original text subject to further amendment.

Will the Senator have any objection to that kind of unanimous-consent request here now? We could examine it at some time over a period of a half-hour or so with the Parliamentarian and get his opinion, but I am sure the Senator does not want to block the Metzenbaum-Kennedy amendment.

Mr. DANFORTH. No, I have no objection to that and no intent to block that amendment. I will, of course, oppose it when it is raised but that is a separate issue.

Mr. PROXMIRE. If the Senator will get unanimous consent that his amendment could be treated as original text subject to further amendment, I will appreciate it very much.

Mr. DANFORTH. All right. Mr. President, I ask unanimous consent that the amendment be treated as original text and subject to further amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DANFORTH. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Missouri.

Mr. METZENBAUM. Mr. President, there are certain antitrust aspects to the amendment that I do not find objectionable or any problem with, and I have no objection to the Senate acting promptly on the amendment.

Mr. STEVENSON. I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 2282), as modified, was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1532

(Purpose: To conform the definition of Bankers' Bank to its definition in P.L. 96-221—§ 105(a)(5))

Mr. STEVENSON. Mr. President, I send another technical amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1532.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike lines 12 through 16 on page 7 and insert in lieu thereof the following:

(5) the term "bankers bank" means any bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks (except to the extent State law requires directors' qualifying shares) and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors, or employees.

Mr. STEVENSON. Mr. President, this amendment improves and clarifies the definition of bankers' banks in the bill.

The amendment provides a more accurate definition of bankers' banks which, under section 105, are permitted to invest in export trading companies. Bankers' banks are banks formed and owned by banks engaged exclusively in providing services for other banks.

Under the bill, a number of small banks in a State could form a bankers' bank in order to hold their interest in a trading company, thus allowing them to combine more efficiently their banking resources. This simply improves and makes more definite the definition of bankers' banks.

Mr. PROXMIRE. Mr. President, if the Senator will yield, I think it is a better definition in the bill. It is much clearer, and I am happy to support it.

Mr. STEVENSON. Mr. President, this has been approved, I believe, on the minority side, and I do not know of any opposition to it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

The amendment (UP No. 1532) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1533

(Purpose: To define more restrictively "Capital and Surplus"—§ 105(a)(10))

Mr. STEVENSON. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1533.

Mr. STEVENSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 9, insert a semicolon after "profits" on line 1, and strike the remainder of line 1 and all of line 2.

Mr. STEVENSON. This amendment strikes language which permitted each bank regulatory agency to include within the definition of capital and surplus "such other items" as the agency might deem appropriate.

With this amendment capital and surplus would be limited to paid-in and unimpaired capital and surplus, and undivided profits.

The amendment was recommended by the chairman of the Federal Deposit Insurance Corporation. I do not know of any opposition to it.

Mr. PROXMIRE. Mr. President, once again this is a substantial improvement because what it does, of course, is to provide that capital and surplus does mean unimpaired capital and surplus and undivided profits, but not everything else they want to throw in, which is what the language of the bill itself did provide before the Senator from Illinois properly amended it. So I am happy to support his amendments.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

The amendment (UP No. 1533) was agreed to.

UP AMENDMENT NO. 1534

(Purpose: To authorize bank regulatory agencies to establish Standards on Taking Title for Export Trading Companies in which Banks Invest More than $10 million or which Banks Control—§ 105(d)(2))

Mr. STEVENSON. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1534:

On page 15, strike lines 1-16 and insert in lieu thereof the following:

"appropriate Federal banking agencies may, by order, regulation, or guidelines, establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. In particular, the appropriate Federal banking agencies may establish inventory-to-capital ratios, based on the capital of the export trading company subsidiary, for those circumstances in which the export trading company subsidiary may bear a market risk on inventory held."

Mr. STEVENSON. Mr. President, this amendment eliminates the requirement that the banking agencies establish standards for taking title within a certain time period. Second, it gives the regulatory agencies specific authority to establish inventory-to-capital ratios for export trading company subsidiaries of banking organizations. Third, it makes all such authority permissive and gives the agencies maximum flexibility in implementation. They can proceed on a case-by-case basis or act by general regulation or overall statements of policy or guidelines.

It is intended to respond to some recommendations by the Independent Bankers Association and also the chairman of the Federal Deposit Insurance Corporation, who did suggest more flexibility. It should moderate some of the burdens on the agencies, increasing their authority and give the maximum flexibility for dealing with bank interests in trading companies.

I hope, therefore, the Senate will adopt the amendment.

Mr. PROXMIRE. Mr. President, this amendment has merit, but it illustrates some of the difficulty with the bill.

As I understand this amendment, it provides that the appropriate Federal banking agency may establish an inventory to capital ratio and enforce that. That would mean the inventory to capital ratio, say, is 10 to 1 is all right; the 11 to 1 may not be regarded as sufficient capital excessive inventory.

The problem is that you have three different regulatory bodies, and one could provide 5 to 1, another could provide 10 to 1 or 20 to 1. Maybe 10 to 1 is a proper ratio and 5 to 1 too restrictive; 20 to 1 would be much too permissive.

This is another illustration of why it would be so helpful if we could concentrate regulation either in the Federal Reserve or in the Bank Regulatory Council so that a single agency could make the determination and make it uniform and consistent. But I have no objection to the amendment.

I hope as we proceed with the bill that the Senator from Illinois and the Senator from Pennsylvania will consider modifying the bill to give the authority to the Regulatory Council so that we can have a consistent application to this legislation.

Mr. STEVENSON. Mr. President, the Senator makes this good point again, and I respond again by just saying that this is not the time or the bill with which to overhaul the regulatory structure for financial institutions in the United States. This bill accepts the existing structure. But I do recognize the validity of much of what the Senator says.

The Congress has responded to his concerns in the past by creating the Bank Examination Council for the very purpose of coordinating the activities of these regulatory agencies and establishing uniform policies and procedures with respect to regulation of banks. And I would, therefore, be willing to do what I think would happen anyway, which is make it clear that in this case as in all cases we do rely on the agencies through the Bank Examination Council to coordinate their activities, their policies, regulations, and so on, so that none of the concerns expressed by the Senator materialize. I hope we can work to that end and, in the meantime, that we can approve this amendment.

Mr. PROXMIRE. If the Senator will yield, I am not trying to reform our regulatory system at all. The Senator from Illinois raises a perfectly proper point. If we are trying to reform it now, that obviously would take hearings and action by the committee and we should have any entirely different bill.

What I am trying to do in this case, however, is to do what we did with regulation O, which is give the power to a particular group to act and in this case—and only in this single authority with respect to the export trading companies—it would be given to the Regulatory Council. They would not have any regulation over the other myriad of responsibilities that all three of the regulatory bodies have now, but it would be an assurance that, as far as this legislation is concerned, we would have uniform regulations and it would, frankly, eliminate one of the principal objections I have to the legislation. Offhand, I cannot think of any reason I should oppose the bill if we could get an agreement on this kind of concentrated authority and power. I am talking about a power, not just an opportunity to sit down and talk it over and then go back and decide what they want to do individually.

Mr. STEVENSON. Mr. President, I am certainly willing to work with the Senator. Maybe we could work something out. Offhand, I have some reservations about giving the power to regulate all of the activities of the banks in connection with trading companies to an agency which, really, is not an agency. It is not a bank regulatory agency. It is more of a mechanism, a coordinating mechanism for those which are bank regulatory agencies. But our objective is the same. I would certainly like to try to work something out with the Senator.

Mr. PROXMIRE. I certainly hope so. All I am talking about is that we give the Regulatory Council the power to issue the regulation and the agencies which carry it out. They would obviously follow through with them. But the regulations themselves would be uniform.

Mr. STEVENSON. Let me discuss it with the Senator and with others and see if we cannot work something out along those lines.

Mr. President, I do not know of any opposition to this amendment. It has been cleared with the minority.

The PRESIDING OFFICER (Mr. MOYNIHAN). The question is on agreeing to the amendment of the Senator from Illinois (Mr. STEVENSON).

The amendment (UP No. 1534) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1535

(Purpose: To clarify that the removal of statutory restrictions to bank investment in export trading companies applies only to banking laws)

Mr. STEVENSON. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. STEVENSON) proposes an unprinted amendment numbered 1535:

On page 9, line 20, strike the word "other" and insert after the word "law" the following new language: "applicable only to banking organizations".

Mr. STEVENSON. Mr. President, I offer this amendment at the request of the administration. It is another clarifying amendment. It makes it clear that the removal of the statutory impediments in section 105(b)(1) to bank investment in export trading companies refers only to banking laws and not to securities or other laws.

Again, I do not know of any opposition to this amendment. It is technical. It has been cleared with the minority.

Mr. PROXMIRE. Mr. President, as I understand it, the Senator's amendment would make it clear that we are referring only to laws applicable to banking organizations. Is that correct?

Mr. STEVENSON. The Senator is correct.

Mr. PROXMIRE. It is a technical amendment, in that sense?

Mr. STEVENSON. Yes.

Mr. HEINZ. Mr. President, as I understand the amendment, it is clarifying and technical in its nature. I certainly can accept it on behalf of the minority.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois (Mr. STEVENSON).

The amendment (UP No. 1535) was agreed to.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, the Senator from North Carolina has an amendment that he would like very much to have considered by the Senate. I think he can be here in a very few minutes. For that reason, I am going to suggest the absence of a quorum. If we cannot reach him right away, then I have a statement I would like to make. I hope that the Senator from Illinois and the Senator from Pennsylvania will permit that brief quorum call.

UP AMENDMENT NO. 1536

(Purpose: To require State law to govern the activities of State-chartered banks)

Mr. MORGAN. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. MORGAN) for himself and Mr. PROXMIRE, proposes an unprinted amendment numbered 1536:

On page 18, after line 24, insert the following new section:

"(g) Nothing in this legislation shall be construed to permit a State chartered bank to invest in an export trading company unless the State chartered bank is specifically permitted to do so by State law."

Mr. MORGAN. Mr. President, first, I commend the distinguished Senator from Illinois for the work he has done on this bill promoting export trading companies. From time to time he has been nice enough to keep me informed of what he was doing. I certainly share with him his concern for trying to enhance the abilities and the opportunities of this country to engage more in the export business. But there is one provision in it which bothers me because of my own philosophical beliefs about our so-called system of federalism which I think sometimes we are inclined to forget.

I thank my colleague, the Senator from Illinois, for recognizing this problem. I think he was trying to find a cure for it. However, I am not quite sure I agree—in fact, I do not quite agree—with his remedy.

The bill, as I understand it, would involve itself with State-regulated banks. It would permit State-regulated banks to engage under the provisions of this bill to the extent that federally chartered banks would.

While I have no objection to State banks doing so, and I hope, as a matter of fact, that State banks will if this legislation is finalized, but I believe very strongly in the dual system of banks. I do not believe that we in the Congress should be passing laws that in any way attempt to regulate banks chartered by the various States or to enhance the authority granted to them by the various States.

After all, it is the State regulatory agencies which are charged with the solvency and the accountability of the various States.

This is not a new problem with me, or not a new thought with me. I believe my colleagues on the Banking Committee know that consistently during my tenure in the Senate and on the Banking Committee, I have tried to oppose every measure that in any way attempted to subject State-chartered banks to Federal control, to Federal regulations, or to Federal involvement, here, again, because of my very strong belief that the dual banking system is important to America, and also because of my very strong belief in the provisions of the Constitution which say that all powers not granted to the Federal Government are reserved to the States.

I want to give a number of examples. Earlier this year when interest rates were a problem and some of the usury laws of the various States tended to hamper the ability of the States to carry on their commerce, there was an effort made on more than one occasion to preempt State usury laws. Al though I recognized the hardship that existed, it was my strong feeling then, and it is still my strong feeling, that the people on the State level should be the ones to remedy the situation. After all, the closer a government is to the people, the more attentive or the more knowledgeable it is of hardships which may exist and the more quickly or more readily relief can be granted.

I was not able to win my point on every occasion because the Congress did, over my objection, preempt the usury laws of the various States.

However, I think we did gain some concessions, because generally, most of those preemption laws provided that the State laws were preempted but that, then, the States could come back and reenact them. Well, half a loaf was better than none and I think that was at least some concession toward the State's authority and the State's right to regulate its own chartered institutions.

Here again, when Congress—I believe last November—passed the Financial Institutions Deregulation Act of 1979 or 1980, or whatever it was, I moved to strike provisions that enabled the Federal Reserve Bank to require reserves from State-chartered banks. If my recollection serves me correctly, the Senate on that occasion agreed with me and did strike it, saying, in effect, that that would subject State-chartered institutions to Fedral control. However, in trying to work out the differences between the House and the Senate, the conference committee put that provision back in and it was ratified by Congress—here again, over my objections in the Senate.

Mr. President, none of those things is relevant to the question before us, except for the point of trying to show to my colleagues my continued concern about those of us here in Congress enacting legislation which interferes with the rights of the States to regulate their own institutions.

I see my colleague from Illinois has already recognized the problem, for which I am thankful, because there is an amendment on my desk, which I think he had proposed to offer, that would authorize the State to restrict the rights of State banks to engage in these activities, but it would have taken affirmative action on the part of the State to permit it. All my amendment does is say that State banks cannot participate unless and until they are authorized by the laws of the State under which and by which they are chartered. I think that is a reasonable provision and I think, Mr. President, that many States would, in States where banks want to participate, readily adopt this and see the wisdom of it. I hope that my State would. Here again, Mr. President, I think it is a decision that ought to be made by the States.

The proponents of this bill can make a persuasive case as to why we ought to go on now and let the States do it, giving to the States the right but also requiring them to take affirmative action to get out from under the provisions of this law. But I can make a persuasive case for Federal regulation or Federal control for almost everything that this Congress has ever done. My colleagues last year, when they were attempting to preempt and did preempt State usury laws, made some very persuasive arguments, and I agree with their arguments. But I just felt that we were seeking relief in the wrong place.

I hope that my colleagues will accept this and I shall promise them this: If they do accept it and if the State banks in my State want to participate or there is a desire to get those banks to participate, I shall do what I can to assist them in doing that. I feel sure that my legislature, which is certainly very much concerned about export business—my goodness, we export soybeans, we export to-

bacco. We are beginning to sort of pat ourselves on the shoulder and talk about how great we are in the export business. We have a Governor in North Carolina who is very aggressive in this area. He has gone on his own trade missions abroad. We in North Carolina have some offices—I think we have one in Japan, maybe one in Europe—maybe in Germany—trying to promote exports and I surely do not want to do anything to discourage it.

Mr. President, this is consistent with my basic philosophy and, I might also add, is consistent with the unanimous position taken by the Governors Conference of this country, just recently meeting in Colorado.

I thank the Senator.

VETERANS PHYSICIANS COMPARABILITY ACT—MESSAGE FROM THE HOUSE

The PRESIDING OFFICER. Will the distinguished Senator from Wisconsin have the kindness to withhold so the Senate may receive a message from the House?

At 2:26 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House, having proceeded to reconsider the bill (H.R. 7102) to amend title 38, United States Code, to promote the recruitment and retention of physicians, dentists, nurses, and other health-care personnel in the Department of Medicine and Surgery of the Veterans' Administration, and for other purposes, returned by the President of the United States with his objections, to the House of Representatives, in which it originated, on reconsideration by the House, and two-thirds of the House of Representatives agreeing to pass the same.

The PRESIDING OFFICER. The Chair lays before the Senate the President's veto message on H.R. 7102, which the clerk will state, and it will be spread in full upon the Journal.

The assistant legislative clerk read as follows:

To the House of Representatives:

I am returning without my signature H.R. 7102, the Veterans Administration Health Care Amendments of 1980, because this bill would provide $80 million a year to Veterans Administration ("VA") physicians in unwarranted salary bonuses rather than target that amount on veterans themselves.

As President, I have worked with the VA to ensure that the health care provided to our veterans is the finest in the world. Toward that goal, during the last three years, I have supported and signed legislation to expand and improve the treatment of all veterans who need to receive care from the Veterans Administration. Clearly, much more remains to be done for our veterans, and it is essential that we direct additional funds to those most in need.

What is *not* essential, and what does *not* further our goal of directly helping sick and disabled veterans, is spending a large sum of money to give VA physicians currently earning an average of $55,000 a year up to 38% bonuses, making them by far the highest paid medical personnel in the entire government. Indeed, so generous are the bonuses provided in this bill that mid-career VA physicians could earn 30% more ($76,200 vs $58,700) than the maximum authorized annual salary for Armed Forces physicians. The Defense Department has recommended a veto of this bill because this differential in pay may adversely affect its ability to solve the current physician recruitment and retention problems in the military.

I am concerned about attracting and retaining excellent VA physicians. But the current salary and benefits are more than sufficient to do that. At the *same* time, the current level of health care is not, in all areas, sufficient. Therefore, rather than spend $80 million on unneeded bonuses for a relatively few physicians, I would prefer that the Congress target funds more directly on improving health care benefits and treatment for veterans.

I therefore urge the Congress to pass a bill which meets the other goals of H.R. 7102, including the Veterans Administration real and specific needs for certain physician specialists, while providing—from the money that would have been projected for excessive bonuses—for improved health care treatment of veterans.

JIMMY CARTER.

THE WHITE HOUSE, *August 23, 1980.*

THE EXPORT TRADING COMPANY ACT OF 1980

The Senate continued with consideration of the bill.

Mr. PROXMIRE. Mr. President, will the Senator from North Carolina yield?

Mr. MORGAN. I am happy to yield.

Mr. PROXMIRE. I congratulate the Senator from North Carolina on his position. That may come as something of a surprise. He and I have been on opposite sides when this kind of issue has come before the Banking Committee and before the Senate. I must confess that it is with a heavy heart that I have opposed him in the past.

I opposed him with respect to overriding State laws on usury. I felt that was absolutely essential. I may have been wrong, and I did it with a heavy heart, recognizing there was a great deal of justice in the position taken by my good friend from North Carolina.

Mr. President, in this case I cannot for the life of me see how his amendment could enfeeable the bill. It seems to me it would strengthen the bill. It would provide what is much more important, of course, a recognition of the integrity of the bank regulators and of the sovereignty that we have written into our Constitution with respect to our States.

Mr. President, is the Senator from North Carolina familiar with the Conference of State Bank Supervisors?

Mr. MORGAN. Yes, Mr. President, I am.

Mr. PROXMIRE. Will the Senator permit me to read from a short letter which they have written on this subject?

Mr. MORGAN. I shall be happy to hear it.

Mr. PROXMIRE. This letter was dated July 24 and addressed to me as chairman of the Banking Committee. They have said this, with respect to S. 2178, the bill before us, the Export Trading Company Act of 1980:

In accordance with your request for comments by the Conference of State Bank Supervisors regarding the above bill, this is to advise that the Conference shares your concerns that this bill would violate the principle of the separation of banking and commerce, which concept has done much to prevent an unhealthy concentration of economic power in this country. Bank equity in nonbanking enterprises, like government equity is the worst type of contrived credit allocation.

While we are supportive of the stated objective to increase U.S. exports, we believe that to permit banks to hold a controlling equity interest in export trading companies would raise serious regulatory problems of the type which the Federal Reserve Board and the FDIC have spelled out in communications on this bill.

The worthy goal of increased exports can be achieved more effectively by reducing government-related burdens on producers of goods and services which might be sold abroad. High taxes, government-fed inflation, consequent high interest rates, government-sponsored labor monopoly, related high labor costs and direct control adversary-type government regulations, all merit attention ahead of another government program—particularly one which has all the ingredients of more, not less, regulatory burdens. The Export Trading Company Act of 1980 inevitably would take on more of the characteristics of high government costs and a bureaucratic power structure than of export expansion.

Finally, representing the primary chartering and regulatory source for state-chartered commercial banks, the Conference must express its strong objection to those provisions in S. 2718 which would permit state-chartered commercial banks to take equity positions in business enterprises in violation of state banking codes banning such action. This proposed action would constitute a serious preemption of state authority to determine the operating powers of banks which they charter and supervise. Certainly in the absence of some overriding national policy considerations, which we do not perceive here, CSBS must object to those statutory provisions in S. 2718 which would enlarge state-chartered banks' powers beyond those which a state authorizes for its institutions.

Sincerely,

LAWRENCE E. KREIDER,
Executive Vice President-Economist.

Mr. President, that is precisely the issue that the Senator from North Carolina would address. What they are saying here is that if the States are to have any genuine, respected authority over their banks, they should not be overridden by this kind of legislation on this issue.

I want to tell my friend from North Carolina once again that while I disagree, as I assume the Senator from North Carolina may disagree with some of the arguments here, frankly, I think the trading company is a good idea, provided that the amount of bank equity is limited and the Federal Reserve Board, or some other single agency, has authority to determine whether or not the power is necessary to expand our exports.

I do not think the rest of the legislation is objectionable. In fact, I think it can be very constructive. But certainly, the part the Senator would amend that deals with the authority of the State banking regulators and would interfere with that authority and override and deny their authority, I think is wrong. The Senator's amendment would correct that.

Mr. MORGAN. I thank my distinguished chairman.

Mr. President, I do have in my State a very active and competent and aggressive commissioner of banks. He is our regulatory authority, or State regulator.

I have known him for many years. I knew him when he was in State government as the commissioner of revenue for our State, then he became a vice president of one of the largest corporations in our State. He is now back in that position as commissioner of banks, and he is very cognizant of that fact.

I have a tendency, every time this question arises, to expound on a point of our philosophy, upon my own philosophy of the rights of the States.

But I really do not think we can tell that story too much. I certainly cannot, coming from North Carolina.

I am not the first North Carolinian to ever raise this question. As a matter of fact, Mr. President, I cannot resist saying to this Senate that my State was not a part of the United States when it came into existence. In March of 1789, we refused to ratify the Constitution of the United States even though 11 other States had already ratified it, and the United States had come into being because at least nine had ratified it.

The reason we did not ratify it was this very reason. North Carolinians were individualists. They were afraid of a government far removed from the people. They were concerned because there was nothing in the Constitution that was brought to us from Philadelphia that guaranteed that we in the States would enjoy these privileges.

I know very well that one of the proponents of the Constitution said in that debate in Hillsboro that we do not have to worry about usurpation of powers by the Federal Government, we do not have to worry about the deprivation of rights, because, after all, we are not going to be ruled any more by a king, or monarch, or somebody from the ruling class, or the elite. We are going to govern ourselves, and surely, we would not deprive ourselves of these precious rights and we would not remove government far from the people.

I remember there was a man in that convention who later held this same Senate seat I now hold, who said, in effect, that there lies within the breast of every human being a secret lust for power, and these rights cannot be entrusted even to our own.

It was not until the Congress, after the formation of the United States, after George Washington's election, until after this Congress had proposed the amendments, which now constitute the first 10 amendments, had been submitted to the people and at least one State ratified those amendments, before my State would even consider coming into the Union. We set out 27 different provisions that we said had to be incorporated into the Constitution before we would even consider becoming part of the Union. One of those provisions was that all rights not specifically delegated to the Federal Government in the Constitution would be reserved to the States.

If my recollection serves me correctly, that is the 10th amendment.

So, my philosophy is one I grew up with. It is one that has been prevalent in North Carolina from the very beginning. We did not have an opportunity to vote for Washington because of that.

It follows on through, down through my immediate predecessor (Mr. Sam Ervin), who I suspect spent most of his life on the floor of this Senate, jealously defending the same kind of rights of the States that I am now defending.

So I do feel very strongly about it, although I support everything that the Senator from Illinois (Mr. STEVENSON) is trying to do with regard to promoting export trade. I just feel so strongly about it that I feel I have to oppose it.

Mr. PROXMIRE. If the Senator will yield further, the Senator from North Carolina has been extremely consistent and eloquent. I think he is winning Congress to his position on this. I hope he does, because he should.

But this particular issue is unusual because it deals, as the override or usury did not, with the dual banking system, which goes to the very heart of our trying to diversify economic power in this country, and try to give as much of the economic authority, in the economic sphere, as possible to the States and not have the Federal Government have a monopoly.

The heart of the dual banking system is the chartering and regulation process. If the States lose that authority, the dual banking system becomes, in my judgment, a sham.

Now, the power of the institution goes to the heart of the charter. In other words, if the bank regulators are going to lose the authority to determine whether or not a bank can diversify into commerce, which it does to some extent, and I think constructively does so, it seems to me that is an extraordinary bad precedent. If certainly enfeebles the dual banking system.

So if the Federal Government dictates the powers of the State banks, it takes over the chartering and regulatory process.

In that sense, this part of the bill strikes at the heart of the dual banking system itself, something I think all of us on the Banking Committee, particularly the Senator from North Carolina, but all of us, are aware of, and in varying degrees support.

Mr. MORGAN. It strikes me that if we give the State banks this authority to act independently of their regulatory agencies, that we could, in effect, have State banks' soundness jeopardized without, maybe, even the regulatory agency knowing about it.

I wonder if the Senator from Illinois would yield for a short colloquy with me on this.

Mr. STEVENSON. By all means. I am happy to. The Senator has the floor.

Mr. MORGAN. Does the thrust of the Senator's bill, would the thrust of what the Senator seeks to accomplish by his bill, be substantially hampered if the State banks had to get permission of their own States before they could participate?

All I am trying to say is this: Is the thrust of the Senator's bill so important that it would be jeopardized by saying to the State banks, "You must go through your normal regulatory authority before you can participate"?

Mr. STEVENSON. Mr. President, so far as I know, no State legislature in the country has addressed this issue. Therefore, no State regulatory agency at the present time has the authority to permit the State banks to do what the national banks would be permitted to do under this bill.

So there could be some significant delay before State banks could participate in the ownership of trading companies. That could put the State banks at a disadvantage, as the national banks get into trading companies. What is more, it also could retard the development of trading companies, which we believe is very dependent on participation by banks, including State banks. So there is some concern about the effects on the trading companies.

However, I am very impressed by what the Senator from North Carolina and the Senator from Wisconsin have said, and I share their concerns about the federal system and the wisdom of respecting and preserving it. I also share their concerns about anything we might do here to impair the dual banking system.

Therefore, at the appropriate time, I should like to address all these concerns, including my concern about the viability of trading companies, getting them off to a strong start, by offering a substitute for the Senator's amendment, on behalf of myself and Senator HEINZ, Senator GARN, and Senator TOWER.

If the Senator will yield to me further, I will explain what we have in mind, and perhaps he can accept this as a substitute.

Mr. MORGAN. I will yield in a moment.

I suspect that if I were to call the major State banks in my State today, they would say, "I wish you would withdraw your amendment, because we would like to have this authority."

I believe that is pretty prevalent, by the fact that all too often we want to have our cake and eat it.

I remind the Senator of the situation in which we found ourselves in the Banking Committee a few days ago, when the independent insurance agents of America were asking us to preempt State laws in order to prohibit bank holding companies from selling insurance. I do not believe that bank holding companies should sell insurance.

Here, again, I was troubled by the same idea: that the insurance agents were asking us, on one hand, to preempt State laws for that purpose but, on the other hand, they were saying, "Don't let the Federal Government regulate insurance."

In that connection, we then offered an amendment to that bill, saying, "All right, let's set up a commission to study the preemption of State laws."

Let me say, first, that my friends in the banking community supported my view: "You should not preempt State laws. Let the States regulate the insurance agents. This bill has no business up here."

Then, when we offered an amendment to the same bill, to set up a study commission and report back in 12 months with regard to preemption of usury laws,

the same people who were hollering "States' rights" to me a few minutes before said, "No, let's not do this, because this would preempt all State usury laws for 17 months."

What I am saying is that, human nature being what it is, we sometimes look at things as to how they will affect us in the immediate future.

I suspect that what I am doing probably would meet with the disapproval of a great many of my State banks, but I do not believe they should be allowed to have their cake and eat it.

Mr. PROXMIRE. Mr. President, I understand that the Senator from Massachusetts is prepared to speak. Perhaps while he is speaking, the staffs could work together and see if we could work out an acceptable compromise on this issue.

I know that the Senator from Illinois had an amendment that related to this directly and went part of the way toward the problems posed here by both the Senator from North Carolina and the Senator from Wisconsin.

Will the Senator permit the Senator from Massachusetts to speak briefly?

Mr. MORGAN. Yes.

Mr. KENNEDY. Mr. President, I support the amendment Senator METZENBAUM will propose dealing with the antitrust exemption contained in this bill. The bill as it now stands would allow the Secretary of Commerce to grant the members of an export trading company an exemption from the antitrust laws. It would allow the Attorney General to sue in court to set aside the exemption when he believes it is not warranted.

The amendment that Senator METZENBAUM and I have offered would simplify this system and, in doing so, would offer additional protection to the American public. It would have the Attorney General, not the Secretary of Commerce, decide whether an exemption is warranted. If he decided to grant the exemption, however, his decision would be final. It would grant immunity from both subsequent private antitrust suits and Government actions.

There are two basic reasons why this amendment should be enacted. First, the Attorney General, not hte Secretary of Commerce has the relevant expertise. The Attorney General has administered the antitrust laws for nearly 100 years. The Secretary of Commerce has little experience in the antitrust area. This fact is highly relevant, for the bill does not purport to set aside antitrust standards. Rather, the bill allows an exemption only if the exempted agreement will not lead to "a substantial lessening of competition or restraint of trade." The Justice Department has administered standards like this one for years. It has also habitually authorized practices that do not violate those standards. It has a system of granting "business review" clearances to firms whose agreements are not anticompetitive. To allow a different agency to administer this exemption threatens to weaken it to the detriment of the public.

We have seen some agencies in the past abuse the power to grant immunity from the antitrust laws. The Civil Aeronautics Board and the Interstate Commerce Commission each, for many years, cost consumers billions of dollars by granting antitrust immunity where it was not warranted. We also know that abuse of this power in the antitrust area could threaten the public with the creation or sustenance of international cartels. In the past, we have seen international cartels, such as the quinine cartel, force buyers to pay exorbitantly high prices for drugs or other items in foreign trade.

Thus, it is particularly important, when giving agencies the power to grant antitrust exemptions, to guarantee that this power cannot be abused. To do so, it is vital that the power rest in the hands of the Attorney General, who understands and can administer fairly the complex legal rules contained in the antitrust laws, and not delegate that power to an agency without experience in this area.

Second, the business community, in exporting, is less in need of exemptions from the antitrust laws, than in need of certainty about what it can and cannot do. The antitrust laws themselves allow agreements among exporters when those agreements are "reasonable."

The basic problem for business, however, is how to know whether an agreement is "reasonable," particularly when private plaintiffs, as well as the Government, may challenge any such agreement in court. The bill, without our amendment, will not give business this certainty. To the contrary, it will spawn lawsuits, as the Attorney General challenges the Secretary of Commerce's determinations in court. That has been the experience under the merger law exemptions contained in the Bank Merger Act of 1966. I have every reason to believe that this similar statute would lead to similar uncertainty and legal tangle. With our amendment, however, the business community will have the requisite certainty. The exporters would make a single stop—at the Department of Justice—and ask for clearance. If their agreement is reasonable, immunity will be granted. Then, neither private plaintiffs, nor the Attorney General, will sue further, thus allowing the export companies to go forward with their proposed arrangement.

In sum, Mr. President, I believe that our amendment will better carry out the purposes of this bill than the language it now contains in this area. It will provide increased certainty to allow business planning; it will provide increased protection for the consumer from possible agency abuse of the power to grant immunity from the antitrust laws. For these reasons, at the appropriate time when the amendment is offered and debated I hope that it will be accepted.

Mr. President, earlier this year we were able to make substantial progress in reducing dramatically the antitrust exemption in the trucking area, for example, which will mean greater competition in establishing the prices to move goods through the motor carrier bureaus and across the trucking lanes of this country.

Earlier last year when we passed the airline deregulation legislation we also reduced dramatically the types of immunities from the antitrust laws that were created under previous legislation.

The fact that we eliminate some of the antitrust exemptions does put a higher premium on the activity and the action of the Department of Justice and on the Antitrust Division.

But I do think that that is the appropriate place for these types of judgments to be made. They have the expertise. They have the knowledge. They have the know-how. And with the type of amendment that has been fashioned I believe that we will actually expedite many of the purposes of the legislation.

Finally, I am mindful that the Justice Department itself has indicated to the committee its willingness to effectively waive this type of intervention, but I do take notice of the fact that the antitrust division itself did not state a position on this particular issue. It has been brought to my attention that those who have been the most concerned about the forces of competition in our society, the maintenance of our antitrust laws, competition, and the protection of the consumers believe that the kind of remedy that the Senator from Ohio (Mr. METZENBAUM) has offered, in which I join with him, offer the best opportunity to carry forward the spirit of this legislation, do it in a timely fashion and also protect the consumers of this country.

We welcome the opportunity. I know the Senator from Ohio as well as myself welcome the opportunity to work with the members of the committee in trying to achieve the objectives which we have presented in our amendment, but we have been unable to make those adjustments and changes to date. I do think that they are of sufficient importance and hope that we will be able to have an opportunity to discuss those further.

Mr. PROXMIRE. Mr. President, will the Senator from Massachusetts yield?

Mr. KENNEDY. I yield.

Mr. PROXMIRE. Mr. President, I thank the Senator from Massachusetts for his comments and I wish to ask him a question or two. Before I do that I wish to point out the Senator from Massachusetts has been the leading force in the Senate in calling for deregulation, particularly deregulation of airlines and elsewhere. If we are going to deregulate we have to recognize the fundamental regulator in American commerce has been competition. That is far more effective and far more satisfactory, of course, than bureaucratic interference. The Senator has recognized that over and and over again. That is what disturbs me here, and that is what is at stake here. Let me read to the Senator from the committee report that makes that so clear. I read just two short paragraphs:

Between 1930 and 1935 Webb-Pomerene associations numbered 57 and accounted for approximately 19 percent of total U.S. exports. By 1979 the number of associations had dwindled to 33 and their share of total U.S. exports had dipped to less than 2 percent.

The reasons for this poor showing are many. First, the vast majority of the 250 or so Webb-Pomerene associations formed over the last 60 years lacked sufficient product-market domination to exert foreign market price control and membership discipline.

What that is saying is they did not have the ability to fix prices and did not have the ability to allocate markets. They did not have the autority in that respect.

Let me point out what the bill provides. On page 29 at the top of the page it provides that this kind of information will be filed with the Commerce Department for the Commerce Department to make a decision.

The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods, warest, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

The difficulty here, as the Senator pointed out, is that this would go to the Commerce Department. The Commerce Department has no experience, no expertise in the area of antitrust. The Justice Department has it now.

We would take that away from the Commerce Department and in the judgment of the Senator from Wisconsin that would certainly enfeeble our ability to enforce our antitrust laws.

I wish to congratulate the distinguished Senator from Massachusetts on his statement.

I ask the Senator this: Could price fixing, allocation of markets abroad, sanctioned by the Commerce Department complicate our foreign trading relations?

Mr. KENNEDY. Mr. President, I just wish to indicate to my friend and colleague that the Senator has stated the situation exactly as I understand.

There is also a provision in here which states that after the Department of Commerce acts they can have the action for validation of the certificate by the Attorney General or chairman.

So actually what we are doing, we are having a preliminary standard which is basically an antitrust standard which has been established in this legislation and which the Antitrust Division has the expertise, the understanding, and the know-how, and is making judgments on that standard almost daily, being applied by the Commerce Department, and then if the Justice Department should make a judgment for invalidation then it all has to return to the Justice Department and we get the delay. We get the uncertainty. We have all the disadvantages of the bureaucracy. And what we are proposing is that the agency of Government which has the expertise, the understanding, the knowledge, and the know-how make the judgment and make it final and make it certain.

So, for all the businesses in this country that are attempting to be involved in this procedure and can meet the other criteria of the legislation they can just go to one shop, so to speak. They know when they receive the judgment determined by the Justice Department that it will be the final judgment made.

There will be the degree of certaintly that will be made by the agency that has both the knowledge and the understanding in this area. What we can be assured of, to the extent that we can be assured of anything, is that the Antitrust Division is going to try and maintain its responsibility in protecting the consumer of this country.

Mr. PROXMIRE. Could not this division of authority complicate our foreign trading relations? For example, suppose we have some country that is moving in the direction of stronger antitrust laws and we come in as the very powerful, superpower, very vital and important trading nation, with our proposals for price fixing and for maintenance of certain markets and for exclusions of some people from the markets. Could we not destroy that movement toward the kind of thing we have been trying to promote in the world for years, the kind of market system of which we all approve so warmly?

Mr. KENNEDY. The Senator is quite correct. He makes a very valid point. I know it is in an area where the Senator has a great deal of expertise as the result of considerable hearings, but it certainly would be my understanding that that could be the case.

It seems to me that this amendment which we offer is reasonable. It does seem to me to reduce bureaucratic shopping, and it also insures that the application of the rules of antitrust laws will be made by those who have been charged by the administration and by Congress with insuring their fair, just, and adequate application.

It does seem to me to be completely consistent with the legislation, and it seems to me to be, quite frankly, contributive to the direction that the sponsors of the legislation would like to go in this very narrow and limited area.

I would just remind the Senate that over the period of the last two sessions we have learned, I think, very clearly that the carving out of antitrust exemptions and the creation of immunities have cost consumers in this country a great deal. They have contributed to the fires of inflation.

It seems to me we want to insure that this new piece of legislation is not going to contribute to that type of policy which, I think, the Senate now in its wisdom is increasingly rejecting and it is relying, as it should, on the forces of competition in our society.

Mr. PROXMIRE. Mr. President, if the Senator will yield further, because I do not want to hold up the Senate any longer, I know this is a very important piece of colloquy which has taken place, but as I understand the Senator from Massachusetts and Ohio, with the Metzenbaum-Kennedy, and now which I am cosponsoring with them, amendment, this does not take the position that we want to discourage export trading companies. We want to promote them.

Mr. KENNEDY. The Senator is absolutely correct.

Mr. PROXMIRE. It does not go to the people but it goes to the procedure of who shall have jurisdiction here.

Mr. KENNEDY. The Senator is quite correct.

I just want to make a parenthetical point. It seems to me that one of the major additional problems we have faced in fashioning and shaping our export policy over the period of recent years is the requirement of multiagency shopping. This has complicated it. The major industries of this country have been able to develop the kind of staff and resources so as to be able to do it.

In many instances they have not been as energetic as some of the newer and younger companies. One of the major hindrances I have seen in talking to small businessmen and women across this country is the fact that they want to reduce the number of agencies they are going to have to shop around for, and they also want certainty, and this amendment achieves that.

We achieve certainty, predictability, and we reduce the kind of bureaucracy which I think has hindered the possibilities for foreign export. But I do want to state that I agree fundamentally with the Senator from Wisconsin when he says that we do need a strong export policy. We do want to insure legislation which will be enacted to help and assist us in achieving that policy. I certainly want to reach that outcome in a way which is going to be fair to the exporters, fair to our consumers, protect them and enhance the United States as a powerful trading partner.

I thank the Senator.

VETERANS PHYSICIANS COMPARABILITY ACT—VETO

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed for not to exceed 10 minutes to the consideration of the President's veto message on H.R. 7102.

The PRESIDING OFFICER (Mr. TSONGAS). Is there objection? The Chair hears none, and it is so ordered.

Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I ask that Mr. SIMPSON and Mr. CRANSTON control the time equally.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 7102.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

The House of Representatives having proceeded to reconsider the bill (H.R. 7102) entitled "An Act to amend title 38, United

Mr. STENNIS. Mr. President, on this vote, I have a pair with the distinguished Senator from Washington (Mr. MAGNUSON) and the distinguished Senator from South Dakota (Mr. MCGOVERN). If they were present and voting, they would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from New Mexico (Mr. DOMENICI), the Senator from South Dakota (Mr. PRESSLER), the Senator from Delaware (Mr. ROTH), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from South Dakota (Mr. PRESSLER) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The yeas and nays resulted—yeas 85, nays 0, as follows:

[Rollcall Vote No. 382 Leg.]

YEAS—85

Armstrong	Glenn	Morgan
Baker	Goldwater	Moynihan
Baucus	Hart	Nelson
Bayh	Hatch	Nunn
Bentsen	Hatfield	Packwood
Biden	Hayakawa	Pell
Boschwitz	Heflin	Percy
Bradley	Heinz	Proxmire
Bumpers	Helms	Pryor
Burdick	Hollings	Randolph
Byrd, Harry F., Jr.	Huddleston	Riegle
Byrd, Robert C.	Humphrey	Sarbanes
Cannon	Inouye	Sasser
Chafee	Jackson	Schmitt
Chiles	Javits	Schweiker
Cochran	Jepsen	Simpson
Cohen	Johnston	Stafford
Culver	Kassebaum	Stevens
Danforth	Kennedy	Stevenson
DeConcini	Lahut	Stone
Dole	Leahy	Thurmond
Durenberger	Levin	Tower
Durkin	Luzar	Tsongas
Eagleton	Mathias	Wallop
Exon	Matsunaga	Warner
Ford	McClure	Williams
Garn	Melcher	Young
	Metzenbaum	Zorinsky
	Mitchell	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stennis, against.

NOT VOTING—14

Bellmon	Long	Roth
Boren	Magnuson	Stewart
Church	McGovern	Talmadge
Domenici	Pressler	Weicker
Gravel	Ribicoff	

The PRESIDING OFFICER. On this vote the yeas are 85 and the nays zero. Two-thirds of the Senators present and voting having voted in the affirmative, the bill, on reconsideration, is passed, the objections of the President of the United States notwithstanding.

UNANIMOUS-CONSENT AGREEMENT—MILITARY PROCUREMENT CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at 4:45 p.m. today, the Senate proceed to the consideration of the military procurement conference report, if the papers have arrived by then, and, if not, upon their arrival, and that there be 30 minutes time limitation on the report, 15 minutes under the control of Mr. PROXMIRE, and 15 minutes under the control of Mr. STENNIS.

Mr. METZENBAUM. I had told Senator STENNIS that I would like to comment about an amendment they dropped out of the bill. It is not a matter at issue, but I would like about 7 minutes.

The PRESIDING OFFICER. Is there objection to the request?

Mr. HEINZ. Reserving the right to object.

Mr. TOWER. Reserving the right to object.

Mr. ROBERT C. BYRD. Mr. President, Mr. METZENBAUM wants 10 minutes.

Mr. METZENBAUM. Ten minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be 40 minutes to the side, 40 minutes to be controlled by Mr. TOWER, 15 minutes by Mr. STENNIS, 15 minutes by Mr. PROXMIRE, and 10 minutes by Mr. METZENBAUM, on the military procurement conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1980

Mr. PROXMIRE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2719.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 2719) to amend and extend certain Federal laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes.

(The amendment of the House is printed in the RECORD of August 22, 1980, beginning at page H7584.)

Mr. PROXMIRE. Mr. President, I move that the Senate disagree on the amendment of the House, and request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. TSONGAS) appointed Mr. PROXMIRE, Mr. WILLIAMS, Mr. CRANSTON, Mr. GARN, and Mr. TOWER, conferees on the part of the Senate.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES

The Senate continued with the consideration of S. 2718.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I would like to inquire about amendments to the export bill.

The Senator from Virginia (Mr. HARRY F. BYRD, JR.) has an amendment. Would the Senator agree to a time limitation?

Mr. HARRY F. BYRD, JR. Ten minutes.

Mr. ROBERT C. BYRD. Ten minutes, equally divided, on the amendment of the Senator from Virginia (Mr. HARRY F. BYRD, JR.).

Mr. PROXMIRE. As the Senator knows, I have an amendment and I do not want a time limitation on that amendment.

Mr. ROBERT C. BYRD. All right.

Mr. President, I ask unanimous consent that there be a time limitation of 10 minutes on the amendment by the Senator from Virginia (Mr. HARRY F. BYRD, JR.) equally divided.

Mr. HEINZ. Reserving the right to object—

Mr. ROBERT C. BYRD. It is an amendment which the Senate has adopted on a previous occasion. As a matter of fact, it is an amendment which I offered.

I temporarily withhold my request.

Would Mr. METZENBAUM be agreeable to a time limitation on his amendment? I have discussed it with him, and earlier——

Mr. METZENBAUM. I do not want to agree to a time limitation. But I give assurance that when the Proxmire amendment is concluded and I call up my amendment, that I do not contemplate being involved in a lengthy discussion.

But there are some others who are cosponsors with me on the subject and I prefer not to enter into a time agreement.

Mr. ROBERT C. BYRD. All right.

Then Mr. PROXMIRE has an amendment, Mr. METZENBAUM has an amendment, and Mr. HARRY F. BYRD, JR., has an amendment.

Does any other Senator have an amendment?

Mr. PROXMIRE. Senator MORGAN has an amendment pending.

Mr. ROBERT C. BYRD. Yes. Rather than the pending amendment by Mr. MORGAN.

Then, may I say that it is hoped by the leadership that the Senate can move along and expedite action on this measure. It is the intention of the leadership to be in late today until the measure is finished.

Several Senators addressed the Chair.

UP AMENDMENT NO. 1336

Mr. STEVENSON. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the amendment offered by the Senator from North Carolina.

Mr. STEVENSON. Mr. President, the Senator from North Carolina has been a strong supporter of exports. He has been one of the principal architects of this bill.

We did not, in approving it in com-

mittee, have any intention of preempting the States.

I, therefore, am prepared to accept his amendment.

I yield to the Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I will agree with my colleague from Illinois in this matter.

Mr. PROXMIRE. Mr. President, before we act on the amendment, I want to be sure we are in a position to hold this amendment in conference. I have no illusions about the conference. I expect to be a member of the conference, inasmuch as the measure emerges from our committee. I have had a chance to observe the position taken by other members of the committee, and I hope we are going to sustain this amendment.

A rollcall vote would be one way of doing it, but I do not want to delay the Senate with a rollcall vote on this amendment. Since I take it there is unanimity and I understand that both the Senator from Illinois and the Senator from Pennsylvania support this amendment, I hope they will do their best to sustain it in conference.

Mr. STEVENSON. I support the amendment. I have indicated earlier that I believe there is a preferable way of handling this matter. I have every intention of supporting the wishes of the Senate and will always do so in conference. I hope that if this bill is passed, we can expect the same of the distinguished Senator from Wisconsin, in conference, with respect to all the provisions of the bill.

Mr. HEINZ. Mr. President, if the Senator will yield, I believe that the Senator from North Carolina has focused on a very important issue with his amendment, and I certainly support what he is trying to do.

I can say with great sincerity that this is a legitimate amendment, a legitimate issue for us to consider, and I believe that the Senate position is something we should uphold in conference.

Mr. PROXMIRE. I thank the Senator.

Once again, I am not going to ask for a rollcall vote on this one, but I hope we can vindicate the trust that the Senator from North Carolina is placing in us by not asking for a rollcall vote. I believe we would have a virtually unanimous vote, since the managers of the bill support it, but I hope we can translate that into keeping it in the final bill.

Mr. MORGAN. I thank the Senator from Wisconsin and the managers of the bill. I believe that, with their support, it would be unanimous; and in the interest of time, I will not ask for a rollcall vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from North Carolina.

The amendment (UP No. 1536) was agreed to.

UP AMENDMENT NO. 1537

(Purpose: To limit the funds authorized for the operation of the Senate in Fiscal Year 1981)

Mr. HARRY F. BYRD, JR. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Virginia (Mr. HARRY F. BYRD, JR.) proposes an unprinted amendment numbered 1537:

At the end of the bill, add a new section.

"Sec. In the fiscal year beginning October 1, 1980, the aggregate amount of funds made available to the Senate shall not exceed 90 per centum of the aggregate amount of the funds made available for such purposes for the fiscal year beginning on October 1, 1979."

Mr. HARRY F. BYRD, JR. Mr. President, this amendment requires a reduction of 10 percent in the cost of operation of the Senate. It is identical to an amendment I offered on June 2, 1980, as modified by an amendment in the second degree by the distinguished majority leader. This modified amendment was agreed to in the Senate on a rollcall vote of 82 to 1, and the amendment I have just sent to the desk is the precise amendment which was approved by the Senate at that time.

As I see it, it is essential that there be a cutback in the huge growth of Federal spending.

In my view, the projected spending total in the first concurrent budget resolution for 1981, which we passed in June, was far too high at $613 billion. Already, the administration and the Budget Committee are advising us that the total will be at least $21 billion higher than that.

In the reduction of Federal spending, the legislative branch should set an example for the Government and the Nation.

The amendment I have presented would require that the aggregate of funds made available to the Senate in 1981, including such items as funds for each Senator to operate his office, for employment and travel, and for committee operations, be held to 90 percent of the level authorized for such purposes in the current fiscal year of 1980.

I understand that outlays for the Senate and its committees for these purposes amount to approximately $210 for the current year, so the reduction could reach $21 million. However, it probably will be less, because some Senators—myself included—do not use their full entitlement for expenses.

The amount involved, in terms of a total Federal budget of $634 billion, is not particularly significant. But the step being urged here is significant, because it is a matter of the Senate setting an example in the fight against inflation.

Mr. President, I hope this amendment will be approved overwhelmingly by the Senate, as it was approved overwhelmingly on June 2 of this year.

I reserve the remainder of my time.

Mr. HEINZ. Mr. President, I believe it is a mistake to clutter up this measure with nongermane amendments, and I really have grave reservations about opening any doors at all to nongermane amendments.

One mitigating factor in this instance is that, as the Senator from Virginia pointed out, this amendment has been adopted by the Senate by an overwhelming vote. Because that is the case, I do not see any reason to drag things out, and I am willing to accept the amendment, with the understanding that has been stated.

Mr. STEVENSON. Mr. President, for that reason, and only that reason—namely, that it was adopted overwhelmingly in the Senate prior to this—I am willing to accept the amendment and take it to conference.

Mr. HEFLIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Virginia. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from South Dakota (Mr. PRESSLER), the Senator from Delaware (Mr. ROTH), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The PRESIDING OFFICER. Are there other Senators who wish to vote?

The results was announced—yeas 80, nays 3, as follows:

[Rollcall Vote No. 383 Leg.]

YEAS—80

Armstrong	Ford	Mitchell
Baker	Garn	Morgan
Baucus	Glenn	Moynihan
Bayh	Hart	Nelson
Bentsen	Hatch	Nunn
Biden	Hatfield	Packwood
Boschwitz	Hayakawa	Pell
Bradley	Hedin	Percy
Bumpers	Heinz	Proxmire
Burdick	Helms	Pryor
Byrd, Harry F., Jr.	Hollings	Randolph
Byrd, Robert C.	Huddleston	Sarbanes
Cannon	Humphrey	Sasser
Chafee	Inouye	Schmitt
Chiles	Jackson	Schweiker
Cochran	Jepsen	Simpson
Cohen	Johnston	Stafford
Cranston	Kassebaum	Stennis
Culver	Laxalt	Stevenson
Danforth	Leahy	Stone
DeConcini	Levin	Thurmond
Dole	Lugar	Tower
Durenberger	Mathias	Wallop
Durkin	Matsunaga	Warner
Eagleton	McClure	Williams
Exon	Melcher	Young
	Metzenbaum	Zorinsky

NAYS—3

Biegle	Stevens	Thomas

NOT VOTING—17

Bellmon	Javits	Ribicoff
Boren	Kennedy	Roth
Church	Long	Stewart
Domenici	Magnuson	Talmadge
Goldwater	McGovern	Weicker
Gravel	Pressler	

So Mr. HARRY F. BYRD, JR.'s amendment (UP No. 1537) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I know of only two more amendments, I believe, those of Mr. PROXMIRE and Mr. METZENBAUM. I am told by Mr. PROXMIRE that his amendment will take a good while—3 or 4 hours?

Mr. PROXMIRE. At least.

Mr. ROBERT C. BYRD. So I suggest that Senators schedule their day accordingly. It will be a long day and a long session because it is the intention of the leadership to finish the bill today.

I hope we will not have to go too late, but I suggest that Senators not be under any illusions. The Senate will be in late in order to finish this bill.

Several Senators addressed the Chair.

Mr. GLENN. Mr. President, I rise to urge my colleagues to vote in support of S. 2718, a bill to encourage exports by facilitating the formation and operation of export trading companies. The purpose of this bill is to improve U.S. export performance at a time when American companies are facing vigorous competition in the international marketplace. From every corner of the world, Government planning and financing of foreign trade challenges the resources of American firms. To meet this challenge, American companies must organize the most efficient business operations possible. We in Government must do what we can to help American business meet this challenge. We can no longer sit idly by while American firms lose their competitive edge. We must act now to free the adventurous spirit of American enterprise from the yoke of tax laws and Federal regulations that limit its resourcefulness.

One way in which we can do this is by facilitating the formation of trading companies. The trading company is not a new idea. It is as old as commerce itself and has enjoyed great success in other countries. In Japan, for example, the top 10 trading organizations, the Sogo Shoshas, account for approximately 60 percent of Japan's imports and 50 percent of its exports. Trading companies have also played an important role in the economic growth of many European countries. Yet, despite their historical and international success, trading companies have not flourished in the United States.

There are several reasons—both economic and legal—for this failure. It is my contention that the economic conditions no longer prevail and that the legal restraints are outdated as well. First, we have been generally self-sufficient for the bulk of our economic needs throughout our Nation's history. Second, the industrial revolution occurred early in our history and its effects spread quickly. This made the acquisition and distribution of goods easy and further reduced our dependence on foreign trade. Third, the large size of our domestic market meant that American businessmen had ample growth opportunities close at hand and with relatively low risks involved. These factors, all product of our unique geographic and economic heritage, limited the attractiveness and need of foreign trade companies. These unique conditions no longer prevail. The interdependence and competitiveness of the world market make it impossible for the United States to sustain its economic growth while operating on out-dated notions of resource self-sufficiency in limited domestic markets. We must acknowledge and respond to the very real international challenges that confront us in foreign trade.

Unfortunately, Federal laws and regulations limit our ability to respond to these new challenges. For example, Government regulations prevent U.S. banks from offering many important trading services. In addition, antitrust uncertainties deter many U.S. firms from cooperating with other U.S. producers in their organization of export activities. These restrictions are anachronisms. They hamper American firms at a time when foreign governments are cooperating with and, in many instances, subsidizing and directing the efficient operation of export trade. These restrictions cost American businessmen opportunities abroad and cost American workers jobs at home.

Mr. President, S. 2718 addresses many of these obstacles and facilitates the formation and operation of export trading companies. It accomplishes this by allowing banking organizations to play a significant role in the future success of American export trading companies. In the past, many small- and medium-sized firms found foreign markets difficult to penetrate and too costly to do business in. Bank participation will enhance opportunities for small- and medium-sized firms to export their products by giving them access to the capital, financing and financially-related services and marketing capacities which U.S. banking organizations can provide.

While the degree of future bank participation in export trading companies, and the forms that such participation may take, remain unclear at this point, section 105 of the bill sets certain limitations on the level of involvement permitted banking organizations that invest in or finance these companies.

S. 2718 permits banking organizations to invest up to $10 million in one or more export trading companies without prior regulatory agency approval as long as that investment does not amount to control. Investments in excess of $10 million, or any investment or action which amounts to control of an export trading company, must be approved by the appropriate Federal banking agency.

The bill sets an overall limit on a bank's involvement by prohibiting the total cost of its direct and indirect investments in and loans to an export trading company from exceeding 10 percent of the bank's capital and surplus. Total equity investment by a bank in one or more trading companies cannot exceed in the aggregate 5 percent of the bank's capital.

Some have argued that these restrictions do not go far enough, that banks should not be allowed to gain control of an export trading company, an innovation that would represent a substantial departure from the long-established separation of banking and commerce in our economic system. They fear that the public's deposits may become exposed to undue risk if banks acquire ownership control of trading companies.

Legitimate questions concerning the scope of bank participation do merit careful consideration. With their international offices, experience in trade financing, and familiarity with domestic U.S. producers, banks will be likely sources of leadership in forming export trading companies. But I feel that S. 2718 includes important safeguards which not only insure against any unsound banking practices, but also insure against any unfair competitive advantages accruing to a trading company or export trade service firm with a bank investor.

A specific provision of the bill prohibits banks from extending credit on a preferential basis to an export trading company in which it has an equity interest. This subsection meets a traditional concern of U.S. policy that banks not favor their affiliates in lending practices. But even without the inclusion of this provision, the Financial Institutions Regulatory and Interest Rate Control Act of 1978 already provides safeguards against such unfair competitive advantage to banking institutions.

The 5-percent limit placed on total equity investments and the 10-percent limit placed on a bank's total investments in or financing of trading companies protect banking organizations from overexposure. I see no harm in allowing a bank to own a trading company as long as such limitations exist. In fact, I think it is wiser to permit banks to have equity and management control over their affiliate relationships rather than to have that capital exposed to decisions by majority nonbank partners. Banking organizations would probably be more inclined to form export trading companies if they can control their investments. Such investments would also be a long-term incentive for them to establish the additional framework needed to provide a complete range of export services.

In addition, S. 2718 stipulates that any proposed or existing investments by banking organizations in trading companies may be terminated by the appropriate Federal regulatory agency upon its determination that the ownership or control of any such investment constitutes a serious risk to the financial safety, soundness or stability of that bank. I believe that these limitations, when combined with the banking agencies' broad regulatory, supervisory, and examination powers and existing legal restrictions, such as on loans to affiliates, assure that this legislation will not create a serious risk to the safety and soundness of bank participation in export trading companies.

I support this bill because I firmly believe that we in Congress must finally recognize the link between international trade and domestic prosperity. This link is especially clear in my home State of

Ohio. Nationally, Ohio ranks fourth in manufactured exports, ninth in agricultural exports and first among the States in jobs related to exports. More than 1 out of every 8 Ohio jobs in the manufacturing sector is dependent on export markets and the produce from 1 of every 3 acres of Ohio farmland is exported.

Unfortunately, exporting remains principally the domain of large corporations with strong marketing staffs and financial backing. There are many firms and financial institutions in the State of Ohio with great potential as participants in the formation of trading companies. I am hopeful that this bill and other trade-related legislation before the Congress will aid their efforts to increase exports from our State.

The challenge before us is clear. Improving our export performance is one of this Nation's most critical economic priorities and cooperation between business and Government is a critical ingredient in any comprehensive national effort to bring this about. For this reason, and in light of my previous comments, I urge my colleagues to oppose any amendments that would restrict the operation of export trading companies and to support S. 2718 as reported.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, first, I want to make it clear that the only difference between the Senator from Illinois, the Senator from Pennsylvania and myself is on the procedures here. It is not on the substance. What I want to do is to have this legislation administered by a single authority. I am perfectly willing to have the Examination Council, which includes the FDIC and the Comptroller and the Federal Reserve Board, make a decision. But I think we should concentrate it. I do not think it should be scattered and diffused, because if we do that we will have inconsistency, and if we do that I think there is likely to be competition and laxity, and if we do that I think it is much more likely that we are going to have a situation in which the banks may well become involved—much more likely that they will be involved—in commerce under circumstances that are unnecessary. That is all that is separating us.

Mr. President, I still maintain, and I want to reiterate and emphasize the fact, that this bill is fundamentally founded on the erroneous premise that we have lagging exports. The fact is we do not have lagging exports. Our exports have increased twice as fast as the gross national product has increased since 1972, twice as fast.

I cannot think of any other major area, big area, involving tens of billions of dollars in the economy in which we have had that big an increase.

Exports have not been doing badly; they have been doing well in relationship to everything else in our economy. The gross national product measures everything, and exports, as I say, have been going up at an annual rate of 20 percent.

The gross national product has been going up at a rate of 10 percent. That is not an indication of a lag. It is an indication of an expansion.

Furthermore, Mr. President, as I pointed out earlier, and my good friend who now occupies the chair (Mr. TSONGAS) disagreed vigorously, gave good reason for disagreeing, but I once again reiterate the fact that this country's exports grew more rapidly than those of Germany during this time, more rapidly than those of Japan, more rapidly, of course, than those of the United Kingdom, more rapidly than Belgium or Sweden or Canada.

Mr. President, the fundamental notion on which this bill is bottomed that our exports are not doing well and we have to gut our antitrust laws, we have to abolish a relationship with respect to our banks and the rest of the economy that has served us well for 100 years just is not substantiated by the facts.

The real problem—if we have a problem on exports, and I think we do—of course, is the declining productivity and inflation. I think all of us recognize that productivity has been sharply declining in this country, the rate of increase in productivity. As a matter of fact, in the last couple of years it has actually been declining not just in its rate of increase but it has been going down. A shocking kind of situation.

I have on my door a chart that compares the increase in productivity in this country over the last 20 years. In the first place, the period ending 10 years ago and, in the second place, the period ending in 1979. It shows that in both periods the United States increase in productivity was behind every other developed country in the world. It shows that the decline for all countries, unfortunately—all the free countries—has been substantial, but the decline on the part of the United States has been virtually catastrophic.

There is nothing here that will increase our productivity. That is what we have to do. We have a program for increasing productivity. We have a program for decreasing the burden the Federal Government represents on the Government and decreasing taxes. That will help improve our export performance as well as curbing imports. But gutting our antitrust laws and inviting the banks to step in to commerce certainly will not help.

Mr. President, this act is a bill which, as I have said—and I repeat—I may support if amendments are adopted to safeguard the risks inherent in bank control of export trading companies and if the Antitrust Division of the Justice Department is not stripped of its jurisdiction to administer antitrust laws governing joint ventures of U.S. companies doing foreign trade. But I am convinced that this bill has made no progress. Once it passes here, it has to go over to the House of Representatives and be considered there. There are a number of Congressmen in the House—far more than in the Senate—who are very skeptical about this bill. If it is going to become legislation this year, I think we need to develop a consensus on it here in the Senate.

Who opposes this bill? The Federal Reserve and the Federal Deposit Insurance Corporation, two of our three principal regulatory agencies, oppose the bill as drafted. How about the banking profession? If you could argue that the banking profession was solid, that the bankers supported the bill, you might have a strong argument. But the fact is that most of the bankers—the Independent Bankers Association, representing virtually all of the small- and middle-size bankers in the country—oppose the bill as drafted, as I am going to document.

As we have indicated previously, those small businessmen now engaged in export trade, particularly the export associations, appeared before our committee in the last hearings that we had and opposed the bill as drafted.

Mr. President, I will not oppose reasonable efforts to increase exports. I want to throw out the bathwater, but I do not want to throw the baby out with the bathwater.

The separation between banking and commerce and the enforcement of the antitrust laws has served this Nation and our free economy well. I wonder if any Senator really wants to gut our antitrust laws in order to establish institutions called export trading companies.

We need to take care in this legislation that, in permitting banking organizations to overstep the bounds between banking and commerce, we build in protections and we build those in in a significant way, guarding against undue risks for the banking system and conflicts of interest in the granting of credit by financial institutions.

We also need to take care in this legislation that associations of American companies engaged in foreign trade will not complicate our foreign relations and will not substantially and adversely affect U.S. commerce.

(Mr. MITCHELL assumed the chair.)

Mr. PROXMIRE. Mr. President, in a previous colloquy that I had with the Senator from Massachusetts, Senator KENNEDY, we pointed out that if this bill passes it could discourage other countries from trying to establish effective antitrust laws and to secure the kind of competition that has been the great boon for this country. Because this legislation encourages price fixing. And I quoted from the reports and from the legislation itself to show where and how it does that.

It encourages fencing off certain areas for exclusive handling by particular concerns. It shifts the administration of the antitrust laws to the Commerce Department from the Justice Department respecting trade. Now, that just will not do.

What does the Commerce Department know about the antitrust laws? No experience with it. The Justice Department has the expertise, they have the experience, and they have established a reputation of being champions of free enterprise and competition.

We know there is always a temptation on the part of every competing business-

man to reduce competition. I have been in business long enough to want to do that myself. Adam Smith was absolutely right that anytime you get the competitors together, businessmen or competitors together, you can expect a conspiracy in the restraint of trade. It is the most natural thing in the world. It is the way business operates and businessmen themselves will admit that.

That is why it is vitally important that we do everything we can to maintain the integrity of our antitrust laws and why we cannot do that if we are going to shift administration of the antitrust laws from the Justice Department which, as I say, developed a clear and well-respected adverse position, and shift that instead to the Commerce Department, which is the one department in our Government which has a responsibility for representing business, the interests of business, and promoting business.

I do not think anybody, any fair-minded person, would say, under those circumstances, that the administration of the antitrust provisions with respect to trading companies would be in the hands of an objective, concerned agency that would fight to protect competition if we move it, as the bill does, to the Commerce Department.

Mr. President, the controversy concerning bank participation comes down to the circumstances in which banking organizations may be permitted to control export trading companies. As I say, the Federal Reserve and the FDIC believe that control carries with it a commitment to the enterprise that goes beyond the capital commitments. Export trading companies engage in high-risk ventures. If banks are to control export trading companies, the risk must be reduced, along with potential for conflicts of interest.

Along with the Senator from Texas, Senator TOWER, the Senator from Massachusetts, Senator KENNEDY, and the Senator from Ohio, Senator METZENBAUM, I intend, at a later date, to offer printed amendment numbered 2276, which will alleviate the concerns I have expressed by permitting banking organizations control of export companies subject to the standards designed to minimize the risks and conflicts of interest.

Mr. President, the antitrust provisions of this bill are not only the concern of a few Senators, they are the concern of people who have been most deeply and directly involved in the export business.

I received a letter from the president of the International Commodities Export Corp. That man is Mr. E. S. Finley.

Mr. Finley's letter was written in July. It is a remarkable letter, because he, of course, is an expert in the export business. His firm lives by exporting. His firm has done a magnificent job in increasing their exports. I think that they know as much about the export business and how to increase exports as virtually anyone you can get.

What does he say? Let me read from his letter. He says:

I am writing to you with regard to the legislative proposals aimed at stimulating U.S. exports and in particular with regard to those which would expand the Webb-Pomerene Act and its exemption in the antitrust laws.

I founded this company 3 decades ago and have led it to a point where we play a significant role in the export of fertilizers and allied products. We were able to do this because we have paid attention to the forces of supply and demand; because we were willing to be competitive.

Mr. Finley underlines that:

One measure of our success is the fact that, since 1948, U.S. exports have gone up 1,400 percent.

That is about fifteenfold:

While our exports have gone up 9,200 percent.

In other words, this man is talking as an expert whose exports have increased more than six times as rapidly as U.S. exports generally. Obviously, he speaks from authority, he speaks from a position of success, he knows what he is talking about. He goes on to say:

Surely, we have shown that we are in favor of expanding the U.S. export trade to which we have made such a contribution. We are, however, in favor of basing such expansion on increased—not restricted—competition.

Mr. Finley goes on to say:

The purpose of this letter is to warn you of the dangerous features of any expansion of the antitrust exemptions under the Webb-Pomerene Act. I have testified in 1978 before the National Commission for the Review of Antitrust Laws and Procedures (copy enclosed). I have also presented a policy statement before National Journal's Policy Forum in 1979 (copy enclosed). In both of these papers I have described a most typical of all Webb-Pomerene associations and have shown that contrary to the generally accepted concept, the expansion of the Webb-Pomerene Act's antitrust exemption will not stimulate an increase in our exports. This exemption was intended originally by Congress to enable small U.S. businesses to compete against European cartels. Contrary to this intent, this exemption has enabled, in fact, the large U.S. companies to form cartels of their own, most often in the areas where there is practically no foreign competition.

Of course, Mr. Finley is talking about the Webb-Pomerene Act in its present form. The situation would become far worse if we adopt the pending bill. He goes on to say:

This exemption has discouraged, and not encouraged, competition and it will lead to further U.S. cartelization and control over the flow of U.S. exports. If exports are being restrained now (as they certainly are), they would be restrained even more if such bills were to pass.

He is talking about the bill pending before the Senate at this moment. Continuing:

Moreover, the Webb-Pomerene associations benefitting from our antitrust exemptions are composed of members which, together, dominate also our domestic scene. Their immunized actions taken with respect to export pricing and quoting have a direct and adverse effect on the domestic market which they are able to influence simultaneously.

I think a lot of people should be struck by that because I think many feel that here is somebody talking about foreign trade and so our passing this bill may interfere with competition abroad. I have indicated the difficulty there. But what Mr. Finley points out is that this will have a perverse affect on competition within this country. As he points out, "Thus, our farmer, our worker, our tradesman, and, of course, our consumer, is forced to pay higher prices for the product."

He goes on to say:

The 1967 FTC study and hearings on the operation of Webb-Pomerene conducted by the U.S. Senate demonstrated how little that Act and its antitrust exemption have done to encourage U.S. exports since 1916. To stimulate U.S. exports, we do not need the continuation and expansion of an act which encourages anti-competitive behavior.

We need, instead, to recognize that our failure to gain our appropriate share of the export market is due to this very anti-competitiveness which, in turn, contributes dramatically to our overall declining productivity, inflation and much, much higher domestic prices of products.

Mr. President, this reinforces, certainly, the point I have been trying to make here, that the way to increase our exports is to improve our productivity. What Mr. Finley says, as an experienced and highly successful businessman, is that the passage of legislation of this kind will reduce competition, which I do not think anybody can deny it certainly will, and in doing so, of course, increase prices because the principal regulator we have of higher prices is competition. Those higher prices, of course, will increase inflation, increase prices in this country, and make it harder for us to sell abroad, not easier, as well, of course, as make it much harder for the consumer.

Then Mr. Finley points out:

The companies who need it the least benefit from the anti-competitive blessing of Webb-Pomerene and have produced hordes of witnesses to testify about the desirability of continuing that blessing.

I have been in this body for 23 years and I love it and I have great respect for my colleagues, but we all know that when we are talked to by our friends at home, and the people who talk to us are the ones who have a stake and have a benefit in this, we listen. Of course, if we did not listen we would not be around here very much.

But there are times when we have to recognize that the testimony we get does not come from the consumers, it does not come from those who are interested in competition; it comes from people who want to reduce competition, it comes from people who perfectly naturally want to do their best to increase their profits by reducing competition as much as possible.

Mr. Finley points out:

The general public who will be adversely affected cannot usually muster the resources to make its voice heard.

Our export markets will expand with more—not less—competition. Companies such as ours can contribute to the give and take of the marketplace if they are allowed to. As my National Journal article illustrates all too graphically, the Webb-Pomerene associations operate by excluding such companies as ours from the marketplace so that prices can be set for export and domestically, and production can be restricted.

A number of commissioners of the National Commission for the Review of Antitrust Laws and Procedures favored outright

repeal of the Act. The majority decided that if any antitrust immunity should be granted, it should de minimis require a demonstration that the proposed association would not adversely affect either the domestic or international trade of the U.S.

I do not know anybody who has proposed that kind of safeguard. I have not proposed it. What I proposed is simply that the Federal Reserve be allowed to make a determination before they permit the export trading association to be owned by a bank; that is, more than 20-percent owned, that is essential to promoting exports. That is all we are asking, even though we know it would have an adverse effect on competition. We do not go nearly as far as Mr. Finley. I wish we could, but we are not going to. We offer an extraordinarily modest and limited amendment.

Mr. Finley concludes:

It is increased competition and increased productivity that represent the foundations on which to build an expanded export trade.

How true, Mr. President.

We are certainly not going to get it unless we improve productivity, unless we reduce inflation. As I say, the evidence we have indicates that whatever effect the Export Trading Act will have, it will be to increase inflation and reduce productivity.

Mr. President, I have here also a letter from the president of the Midland, Inc., which is an exporter, which also represents, as I say, an expert in the field. This man is named Leonard M. Goldstein. It is a letter to Senator METZENBAUM. He has this to say:

I am writing this letter to you because of your involvement in the Senate Sub-Committee reviewing legislation concerning the Export Trading Company. I have the feeling that my viewpoint will be received sympathetically, because I find that you traditionally represent my point of view on most issues, and your votes in the Senate would pretty much be mine if I were there instead of you. This is not too surprising, inasmuch as we received our educations at the same university and in the same fraternity house, only a few years apart.

Midland, Inc. is an Export Management Company and the writer has been involved in International Trade for 35 years. My experience in this field causes me to look with a great deal of skepticism at the legislation which would provide for Export Trading Companies.

While I am in complete agreement with the goals Congress seeks to achieve thru the Export Trading Company and other legislation designed to encourage U.S. export activity, I seriously doubt that your colleagues have zeroed in on the real source of the current problems and, therefore, I fear that you will fall far short of the mark in trying to solve them.

As you must know, up until a relatively few years ago, we traditionally enjoyed large, favorable trade balances and unlike almost all other developed nations of the world, principally Europe and Japan, international trade was not looked upon as an important factor in our economic well-being. True, when anyone bothered to examine the facts, they soon found that millions of Americans were employed as a result of our export trade; but certainly, with very few exceptions, most domestic manufacturers during the period of 1946 thru 1979, achieved generally favorable profit results without depending upon foreign trade. The Japanese Ministry of Foreign Affairs in their analysis concerning U.S. export competitiveness describes our country as the world's "biggest and most indifferent exporter". My own experience in dealing with literally dozens of small and medium sized American manufacturers, would certainly reinforce that description. Surely, no one can deny that our country has been a reluctant exporter.

Mr. President, this letter was written by a man who has been an exporter for 35 years, one who recognizes that we have been far too casual in promoting our exports and that we should and can do a far, far more effective job. Yet he says that this legislation is the wrong way to go.

He goes on to say:

If one were to try to isolate the single most powerful barrier to expansion of our export trade, it would be the relative indifference of the American manufacturer to the overseas market. I have found that even those companies that are most active internationally, invariably lean domestically when there is any kind of priority decision to be made. Very few American manufacturers are willing to design for and service foreign markets. A U.S. producer, who will readily risk hundreds of thousands, if not millions of dollars on new ventures, new products and new markets in the United States, becomes extremely conservative outside our borders. Incidently, I would recommend your reading the Japanese report, which was prepared by the Japanese Embassy in Washington and is titled "Analysis of Selected Economic, Legal, Social and Organizational Factors Concerning the U.S. Exports, or Impairing U.S. Export Competitiveness."

The issue then it seems to me, Senator Metzenbaum, would be how do we get their attention—that is the attention of the American, small and medium sized manufacturer, to the potential profits available to him overseas. I really do not believe that there is any basis, in fact, for the proposal that says the Export Trading Company is the answer to our problem.

The Export Management Company is, and has been available for many years, to provide the expert services required to enable the small and medium-sized manufacturer to partake of the world market. The Export Trading Company, and specifically the involvement of banks in such companies, is fraught with danger. It seems to me that it sets up a classical conflict of interest when I approach my bank for funds to finance expansion of my export activities in competition with their own Export Trading Company operations. Furthermore, the Export Management Company, because of its very nature, which demands sensitivity and attentiveness to the needs of each overseas market, is in a far better position to provide positive results for the manufacturer, than this new, glamorous, well-financed (and I would guess ponderous and rigid as well), brain child of some large bankers.

There is either great naivete, or a complete lack of understanding, when the proponents of this legislation would have one believe that we should have the Export Trading Company because it has proven to be so successful in countries such as Japan and Germany. First of all, I am not aware of the Export Trading Company's existence in Germany as it operates in Japan, where it seems to be a very unique type of organization, filling the needs of that singular market. One needs to remember that Japan and Germany, as well as other European and Scandinavian countries, have depended, for their very existence, on international trade. There certainly are a great many other more valid factors that have been responsible for the success of those countries, in creating and maintaining a favorable balance of trade.

Finally, it seems to me that there are some things that Congress can do that will stimulate and influence American manufacturers toward greater interest and attention to the export markets of the world.

First of all, the most effective way to get the manufacturer's attention is to provide him the opportunity to earn more profit on the export sale than on the domestic sale. This is done in many ways by our competitors, most of them involving tax advantages or incentives. In some countries certain domestic taxes are waived on merchandise shipped overseas, and in others, different forms of tax benefits are provided the exporter.

Secondly, the overseas offices of the United States Department of Commerce must provide a great deal more service to the exporter than is done currently. In the late 1940's and 1950's, when I first entered the international field, the Department of Commerce provided exporters a great many facilities and services without charge. Today the services seem to have diminished, but now we pay for them. In comparison, I have found, because we also represent Canadian manufacturers, that the counterpart of our commercial attachés, working for the Canadian government, provide all kinds of specific and special services for the taxpayer. Those include providing lists of potential customers, market-by-market, personal survey work and arranging for appointments between exporter and potential customers when the exporter visits a particular country. My experience has been that our Commerce people are usually overstaffed and underworked. Unfortunately, however, we are unable to just write a letter to the commercial attaché in Paris, describing a new kind of widget that we are manufacturing, sending him literature and price information and asking if he can provide us some assistance in putting us in touch with potential importers for the product.

In summary, therefore, it is my firm belief that it is not the Export Trading Company, or any other cosmetic types of activity which will change the image of the United States as an "indifferent exporter". Instead, it is going to take real profit incentives and meaningful assistance on the part of our staffs overseas, to turn this thing around. I am sure you know that oil prices mean that the United States, just as Western Europe and Japan, now has to be very, very much concerned about its export activity. The problems that have been created in the past seven years, with the advent of OPEC, will not be resolved by some surface-like creation of new organizations which are supposed to provide miracles.

Sincerely,

LEONARD M. GOLDSTEIN,
President.

Mr. President, I might say that I do not share the views of Mr. Finley and Mr. Goldstein completely. I think that, in general, they are experienced men in the field, highly successful men in the field. They obviously know what they are talking about. I think we should listen to their recommendations carefully. I happen to think that export trading companies can play an important role. I intend to introduce legislation to that end.

But I do not, as chairman of the Senate Banking Committee, want to be in the position of having them destroy the separation we have had for more than 100 years of banking and commerce. I

think this is vicious. I think it can be very adverse to competition.

I think it will not be long before our constituents will be coming in and asking, "How in the woorld could you have voted for that bill? It puts me in competition with a competitor owned by a bank. In any kind of a credit crunch I cannot make out. He can get all the credit he wants, and obviously, I cannot."

That is just what the pending bill before the Senate would do. It is that kind of unfairness I am trying my best to correct as much as I possibly can.

Mr. President, I have read a letter from Mr. Finley. I qualified him as president and chief executive officer of a highly successful commodities export corporation.

I would like to now read from his testimony because it is very telling testimony before our Banking Committee on July 25 of this year.

Incidentally, this firm not only has had a vast increase, but they have an annual volume of close to a quarter of a billion dollars. So, obviously, he speaks with enormous success, as I say, and with vast experience in the field. He says:

Nobody can question the importance of increased exports to our economy. While those of the other industrialized countries frequently represent 20 to 40 percent of their gross national product, ours represent barely 10 percent. With a continuing annual trade deficit running into many billions of dollars, it is understandable that all of us are deeply concerned. Unfortunately, some well-meaning legislators and certain private interests are creating a climate of panic to gain quick acceptance of solutions which eventually will hurt our country much more than the current deficits. Indeed, I am sad to note that Congress can only come up with a bill to encourage the creation of U.S. "trading companies" and expanded antitrust exemption of U.S. export activities by amendment of the Webb-Pomerene Act.

These voices are simply saying that if we will allow virtually unbridled price fixing, with immunity under antitrust laws, our failure to export a substantial share of our gross national product will have been corrected. I am chagrined by this bill as a business man, as an exporter, as an entrepreneur and as an economist.

For the past two decades, we have been told over and over again that billions of dollars worth of potential annual export business is neglected because small and medium size producers are unable to develop foreign markets. We have also been told that only one in ten U.S. manufacturing firms sells abroad. We are told that this new legislation would help materially to get these small producers to export. The fallacy of it is that the world has changed in the last quarter of a century and even the developing and under-developed countries now have local industries which can produce the needed goods we are talking about and therefore, in most cases, make it almost impossible for the U.S. to succeed in such exports. We are also told that important service contracts abroad elude our major contractors.

But there is nothing in our antitrust laws that prevents our major contractors to join together in projects.

This highly publicized bill, S. 2718, tells us that we should go the OPEC way. My personal experience tells me otherwise. One measure of the success of my company is the fact that, since 1948, U.S. exports have gone up 1,500 percent, while our own exports have gone up 9,200 percent. We did not need any protective devices or legislation to do this. We were able to do it because we paid close attention to the forces of supply and demand and because we were willing to be competitive. Surely, we have shown that we are in favor of expanding U.S. exports by making this contribution over the years. We are in favor of further expansion, but we believe that such expansion should be on the basis of increased, and not restricted, competition.

The purpose of my coming here is to warn this committee of the dangerous features of any expansion of the antitrust exemptions under the Webb-Pomerene Act. I have testified in 1978 before the National Commission for the Review of Antitrust Laws and Procedures. I have also presented a lengthy policy statement before the National Journal's Policy Forum in 1979.

I have testified before the Subcommittee on Foreign Commerce of the Committee on Commerce on S. 2754 in January, 1972.

In many of these papers, I have described typical Webb-Pomerene associations and have shown that, contrary to the generally accepted concept, the expansion of the Webb-Pomerene Act's antitrust exemption—

Which is, of course, what the pending bill does. Continuing:

Will not stimulate an increase in our exports. As we all know, this exemption was intended by Congress originally to enable small U.S. businesses to compete against the then prevailing European cartels. Contrary to this intent, this exemption has enabled, in fact, large U.S. companies to form cartels of their own, most often in the areas where there is practically no foreign competition.

Moreover, this exemption has discouraged, and not encouraged, competition and has led, and continues to lead, to further U.S. cartelization and control over the flow of U.S. exports. If exports are being restrained now, as they certainly are, they would be restrained even more if such bills were to pass. The most disturbing fact about all this is that the Webb-Pomerene associations benefitting from antitrust exemptions are composed mostly of members which, together, dominate also our domestic scene. Their immunized actions taken with respect to export pricing and setting quotas have a direct and adverse effect on the domestic market which they are able to influence simultaneously.

Mr. President, I think that is a very serious charge. It is a charge that should concern us because it means, of course, prices are going to be higher for consumers, it means we are enfeebling the forces of competition by undermining the antitrust laws, and it means that the legislation we are adopting here, in the long run, far from helping our exports, will hinder them because, as I say, the basic problem with the American economy today is inflation.

We all know that if we can increase productivity and reduce inflation we will increase our exports and do other things even more important. But we cannot do that if we are going to undermine the principal institutional provision we have now in the law in this country, the antitrust laws which enforce competition.

It is fascinating. We hear lots of talk on inflation and how we can cope with it by holding down Federal spending, by getting agreement on the part of the workers not to demand such high wages and salaries. We get many other suggestions, including wage and price controls. Some of these suggestions are constructive. I believe that holding down the budget and holding down wage increases can be helpful. But by far the most effective way we can combat inflation is to stimulate and encourage competition every way we know.

Our principal weapon in this regard should be the antitrust laws. It does not make any sense, when the No. 1 problem of our economy, the No. 1 issue facing us, when we go home and talk to our people, is inflation. We know that we are in the worst inflation we have been in during the peacetime history of our country.

Last month, inflation happened to be zero, for 1 month. Everybody knows that was a phony. The underlying rate of inflation is at least 9 percent, probably 10 percent. It was higher than that a while ago and can go much higher again.

For us to adopt legislation here that is going to aggravate inflation, in the judgment of the best experts we can get to testify on it—people who have had the greatest experience in the field—does not make any sense.

I continue to read from the testimony of Mr. Finley:

Thus, our farmer, our worker, our tradesman and, of course, our consumer, is forced to pay higher prices for the product.

The 1967 FTC study and hearings on the operation of Webb-Pomerene conducted by the U.S. Senate demonstrated how little that Act and its antitrust exemption have done to encourage U.S. exports since 1916. To stimulate U.S. exports, we do not need the continuation and expansion of an act which encourages anti-competitive behavior.

We need, instead, to recognize that our failure to gain our appropriate share of the export market is due to this very anti-competiveness which, in turn, contributes dramatically to our overall declining productivity, inflation and much, much higher domestic prices of products.

The companies who need it the least benefit from the anti-competitive blessing of Webb-Pomerene and have produced hordes of witnesses to testify about the desirability of continuing that blessing. The general public who will be adversely affected cannot usually muster the resources to make its voice heard.

DEFENSE AUTHORIZATIONS, 1981—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the conference report on the military procurement bill. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6974) to authorize appropriations for fiscal year 1981 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test, and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize military training student loans, to authorize appropriations for fiscal year 1981 for civil defense, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of August 18, 1980.)

Mr. STENNIS. Mr. President, I understand that there are 40 minutes to each side. The 40 minutes of the so-called opposition will be under the control of the Senator from Texas (Mr. TOWER). On the other side, 15 minutes will be under my control, 15 minutes are allotted to Senator PROXMIRE, and 10 minutes are allotted to Senator METZENBAUM.

The PRESIDING OFFICER. The Senator is correct.

Mr. STENNIS. Mr. President, I will take a few minutes with respect to this matter, and then we can yield time.

The conference report on H.R. 6974, the fiscal year 1981 defense authorization bill, is fully endorsed by me and all other Senate conferees, each of whom has signed this report.

We had an active, vigorous conference, with all 17 members of our committee serving as conferees. I asked that they be appointed because all had taken an active part, sometimes a vigorous part, in the writing of this bill.

This bill adds up to the largest number of dollars of any military authorization bill ever presented to the Senate. The bill has been under the process of construction and refinement for many months. There have been hearings, rehearings, and subcommittee hearings—more than 45 of them by our committee and subcommittees—and a similar effort was made in the House of Representatives. We had approximately eight long sessions among the conferees as well as additional meetings among subunits of the conferees. Our Defense Appropriations Subcommittee has had 18 hearings. During all this time, we had two or three debates on the budget resolution.

Mr. President, I particularly thank all members of our committee, including the subcommittee chairmen and the ranking minority members, for the splendid work they did in dealing with this matter.

As an indication of how many items are to be considered in this bill, there were 700 differences between the House bill and the Senate bill when we started our conferences. A great deal of work went into the bill by highly competent staff members, and I especially thank Mr. Hugh Evans, who is the senior legislative counsel member of the Senate group. He is not a member of our staff directly, but he did a world of work in connection with this matter.

Mr. President, I do not have much time, and I do not believe much time is needed. This bill is a new start, we might say, with reference to the most modern weaponry that science and money can provide—ships, aircraft, tanks, missiles, and other weapons of all kinds. It is really a source of pride to think that we do have the ability and knowhow—and so far we have the money—to provide such a massive array of military power.

I believe that the most serious problem connected with our defense is the shortage of certain types of U.S. military manpower. Frankly, I am disappointed that we do not have a system to get enough of the necessary manpower to carry out what we need and to handle the complex military weaponry we have. Recent years have brought about a weakness in our ability in this field. Without dwelling on it now, it has been fully explained through hearings and debates. It adds up to the fact that our All-Volunteer Force, with all deference to it, is not sufficiently supplying the manpower—enough of the right talent, capacity, courage, willpower, and determination—to fill the role our units need.

This brings me to think about and pay tribute to a great many of very rugged Reserve units that we have scattered through all of our services. They represent a great deal of talent, training, and a special form of patriotism that fits in so well with the needs of our time. I wish to see the Reserves assigned more of the real missions and given substantially more of the hardware, the machinery, the weaponry, the planes, and other items. We are improving the system in that way.

We had a very fine debate this year with reference to the military Selective Service Act that was directed at the matter of registration. This legislation was passed by a considerable vote in each house and signed by the President who had recommended it. Contrary to some predictions there was a quiet, orderly, and I thought very fine patriotic response as a whole to this law that required young men who were born in a certain 2-year period to register.

Incidentally, there is a military pay increase carried in this bill. In round terms an additional $700 million is included, which is enough to help in certain needed areas. I think it will provide some help but I do not believe that it is yet a substitute for a reasonable Selective Service Act. When I say "reasonable" that means one without any kind of exceptions, excuses, or any kind of deferment.

I think now that peacetime registration has understood better nad accepted by the public that I hope the situation will be such next year, regardless of who is President, that we can move on this matter. I have dwelt on the registration matter over and over because of its necessity and because of its obvious importance.

I point out, also, that we put in additional planes, ships, and missiles. We emphasize the spares as parts of our radiness program. We were impressed, also, by the high cost of all of these items. We compensated for that in that we know we have the best weaponry, as good as can be found anywhere. We do have the know-how to continually have the best and the most modern weaponry.

We are building up the naval power and I wish it were faster. We are building up the active inventory of planes. I think we can look forward to a continuation of these programs.

Mr. President, I ask unanimous consent that my prepared statement and a summary of the conference report be inserted in the RECORD.

Along with others, I will be glad to answer questions that might be on the minds of any of the Members at this time.

I yield the floor.

There being no objection, the statement and summary were ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR STENNIS

Mr. President, the report from the committee of conference on H.R. 6974, the Fiscal Year 1981 Defense Authorization Bill, is fully endorsed by myself and all other Senate conferees, each of whom has signed this report.

Long hours were spent in conference with our dedicated colleagues from the House of Representatives on this military authorization bill. The result is most positive and satisfying. We have succeeded in combining the best thinking of both Houses into one comprehensive and well-reasoned bill. The differences between the House bill and the Senate amendment were carefully studied to find those elements that would most effectively and efficiently improve America's defense posture and preparedness.

The conference committee greatly benefitted from the participation of the entire Senate Armed Services Committee, all 17 members of which were appointed as conferees. The Senate conferees worked hard in presenting and defending the Senate's positions. There were over 700 differences between the House bill and the Senate amendment. Eliminating these differences took eight long sessions by the full conference committee and many sessions as well by various subcommittees.

CONFERENCE REPORT IS A MAJOR MILESTONE IN A LONG PROCESS

This conference report represents a major milestone in a long process of development and review of the authorization request of the Department of Defense. The Military Departments began work on this request a full 20 months ago. Before it was forwarded to the Congress, this authorization request was carefully reviewed and refined by the Secretary of Defense and his assistants and finally by the President and others within his Executive Office. The work of those in the Department of Defense—both uniformed and civilian—should be recognized for their initial work on this request as well as their useful testimony and counsel on these important matters.

This careful review was continued within the Congress. The Senate Armed Services Committee had a total of 45 hearings by the full committee or subcommittees. Twelve markup sessions by the full committee were necessary to fully cover all of the issues. The Senate itself vigorously debated many of the important issues decided by this Defense Authorization Bill. On the House side, a similar effort was made including a total of 32 hearings and markup sessions by the full House Armed Services Committee and 68 hearings by its subcommittees. And now, the conference report with its thoughtful recommendations is at hand. Next comes the appropriations process. The Senate Defense Appropriations Subcommittee has had 18 hearings to date. While this entire process is not completed, this conference report is a major and most significant milestone.

RECOGNITION OF HARD WORK BY COMMITTEE MEMBERS

As Chairman of the Armed Services Committee, I am proud of this conference report and the hard work of the committee membership during the last 8 months leading to this result. I particularly want to thank the distinguished Senator from Texas, Mr. Tower, who as the ranking minority member of the committee has provided his extensive expertise and wise counsel.

While every member of the Armed Services Committee contributed to this bill, the

Pursuit of technological breakthroughs in strategic weaponry, while strengthening all three legs of our strategic triad;

Increased military presence in the Pacific and Indian Oceans and in the Middle East;

Constant attention to the effectiveness and strength of the North Atlantic Treaty Organization;

Enhanced readiness through military registration and steps to retain career military personnel; and

Steps to improve and invigorate our intelligence agencies.

Events of the past few years have reminded the American people of the need to maintain a first-rate security capacity. That is the purpose of this bill. The planned inventory of Navy ships in 1985 is 27 percent higher than the low point of that inventory, in 1978. The bill before us, H.R. 6974, will contribute to that goal by authorizing $8.4 billion for Navy shipbuilding, and by adding 17 new ships.

At the end of fiscal year 1980, the Air Force will have 516 F-15 fighter aircraft, compared to only 94 in 1976; and it will have 158 F-16's, compared to 2 in 1976. H.R. 6974 will add, for fiscal year 1981, 42 F-15's and 180 F-16's.

Our contribution to NATO is part of our policy to strengthen the European theater through a program of equipment modernization. All NATO members have pledged to increase defense spending by 3 percent a year, after inflation. For the 5-year period ending with fiscal year 1981, U.S. troop strength in Western Europe will have grown by more than 44,000 military personnel—a 15-percent increase. H.R. 1954 will contribute toward maintenance of that force.

The bill before us breaks new ground by authorizing $1.1 billion for the rapid deployment of 200 MX missiles to needed flexibility in the Middle East and Southwest Asian theaters.

In our strategic arsenal, the technological breakthrough offered by the cruise missile has been pursued. H.R. 6974 authorizes continued purchase of cruise missiles. The bill also authorizes deployment of 200 MX missiles to strengthen the land leg of our strategic triad. Additional funds over the President's request have been included for research and development of the Trident II missile. New funds also have been included for seed money for a new generation of manned strategic bombers.

Last February, the Senate authorized $0.5 billion in additional pay and allowances. H.R. 6974 authorizes additional funds to cover an 11.7 cost-of-living military pay increase, and to cover special bonuses for both pilot and general troop reenlistment, per diem, educational and medical benefits and reserve pay.

H.R. 6974 also will add 2,900 troop positions to the Marines.

Finally, congressional review of general military readiness is strengthened by bringing operations and maintenance accounts into the regular authorization process.

I congratulate the committee on adoption of this conference report. Our troops in the field will benefit from increased pay and benefits, and from improved equipment. This bill also gives our military commanders additional flexibility to tailor our defense responses to a changing world. Finally, this bill represents a sound response to the defense needs raised by the administration and by both Houses of the Congress.

I wish to thank again the chairman of the Armed Services Committee, Senator STENNIS; and the ranking minority member of the committee, Senator TOWER; and the other members of the committee for the time and effort they have put into this legislation.

They have the gratitude of the Senate, and of the Nation.

Mr. PROXMIRE. Mr. President, I yield back my time. The yeas and nays have already been ordered.

Mr. TOWER. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the conference report.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENSON (after having voted in the negative). Mr. President, on this vote I have a pair with the Senator from Idaho (Mr. CHURCH). I have voted no. If the distinguished Senator from Idaho were present, he would vote "yea." Therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Oklahoma (Mr. BOREN), the Senator from North Dakota (Mr. BURDICK), the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. McGOVERN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Alabama (Mr. STEWART), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota (Mr. BURDICK) and the Senator from Washington (Mr. MAGNUSON) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BELLMON), the Senator from New Mexico (Mr. DOMENICI), the Senator from New Yory (Mr. JAVITS), the Senator from Idaho (Mr. McCLURE), the Senator from South Dakota (Mr. PRESSLER), the Senator from Delaware (Mr. ROTH), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The PRESIDING OFFICER. Are there other Senators in the Chamber who desire to vote?

The result was announced—yeas 78, nays 2, as follows:

[Rollcall Vote No. 334 Leg.]

YEAS—78

Armstrong	Glenn	Nelson
Baucus	Goldwater	Nunn
Bayh	Hart	Packwood
Bentsen	Hatch	Pell
Biden	Hatfield	Percy
Boschwitz	Hayakawa	Pryor
Bradley	Heflin	Randolph
Bumpers	Heinz	Riegle
Byrd, Harry F., Jr.	Helms	Sarbanes
Byrd, Robert C.	Huddleston	Sasser
Cannon	Humphrey	Schmitt
Chafee	Inouye	Schweiker
Chiles	Jackson	Simpson
Cochran	Jepsen	Stafford
Cohen	Johnston	Stennis
Cranston	Kassebaum	Stevens
Culver	Laxalt	Stone
Danforth	Leahy	Thurmond
DeConcini	Levin	Tower
Dole	Lugar	Tsongas
Durenberger	Mathias	Wallop
Durkin	Matsunaga	Warner
Eagleton	Melcher	Williams
Exon	Metzenbaum	Young
Ford	Mitchell	Zorinsky
Garn	Morgan	
	Moynihan	

NAYS—2

Hatfield	Proxmire

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stevenson, against.

NOT VOTING—19

Baker	Javits	Ribicoff
Bellmon	Kennedy	Roth
Boren	Long	Stewart
Burdick	Magnuson	Talmadge
Church	McClure	Weicker
Domenici	McGovern	
Gravel	Pressler	

So the conference report was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the conference report was adopted.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES

The PRESIDING OFFICER. The Senate will now resume consideration of S. 2718.

The Senate resumed consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I should alert Senators to the fact that the ERISA legislation may still be brought up today. Senator WILLIAMS was here on the floor a moment ago and indicated that they have about worked everything out.

I turn to the distinguished Senator from New Jersey (Mr. WILLIAMS). Will the Senator enlighten the Senate on what the prospects are for action on ERISA yet today?

Mr. WILLIAMS. Mr. President, at this point, I can only respond that it is a possibility that we will be able to bring it up, but I cannot say more than that. There are developments even within the last 2 minutes that lead me to feel that I can only call it a possibility.

Mr. ROBERT C. BYRD. Mr. President, may I say that the Senate will continue

on into the evening on the Export Trading Act until we can make some disposition one way or the other or decision with respect to ERISA.

I am informed by my congenial and very able friend, Mr. PROXMIRE, who never misses a rollcall vote in this Senate and who has the all-time record for rollcall votes, that he does not intend to let the export trading bill pass the Senate today. He, very frankly, conscientiously, and straightforwardly, informed me a little while ago that he intended to filibuster the export trading bill.

That being the cause, I suggest to Senators that they stay around until we can determine whether or not ERISA is going to be called up and whether or not Mr. PROXMIRE really means to filibuster.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. PROXMIRE. Regrettably, I must say to the majority leader, and for the edification of my colleagues, that there will not be a vote on the export trading bill tonight if I can help it. If I am still conscious and able to speak, there will not be a vote on the bill tonight.

Mr. ROBERT C. BYRD. What about *tomorrow*?

Mr. PROXMIRE. Well, it depends on my endurance. If I can keep going, yes. If the Senator wants to keep it in session for 36 hours, I will do my best.

Mr. ROBERT C. BYRD. The Senator from West Virginia does not want to keep us in session. But we will be in tomorrow if the Senator is not going to let us vote this evening. That does not mean we have to stay in all night, of course. But the Senate will be in tomorrow.

Then there will be a cloture vote, I am sorry to say, but I am acting on the instructions of the distinguished Senator from Wisconsin (Mr. PROXMIRE). I will be offering a cloture motion and there will be a cloture vote on the export trading bill when the Senate returns on Wednesday, a week *from tomorrow*.

Mr. PROXMIRE. Well, that is entirely up to the leader, if we have a session tomorrow. I understood we were not going to have one.

Mr. ROBERT C. BYRD. We will have a session tomorrow.

The PRESIDING OFFICER. If there is no further amendment, third reading of the bill.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business before the Senate is *S. 2718*.

Mr. PROXMIRE. Mr. President, about 1½ hours ago, when the Senate began consideration of the conference report *of the military* procurement bill, I was speaking on the export trading company bill. I was quoting a distinguished and *highly successful* exporter, Emil Sherer Finley.

CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, I regret to offer the cloture motion, but I do it with a smile and the Senator understands.

Mr. PROXMIRE. Mr. President, I certainly do. The Senator from West Virginia, the majority leader, has been more than fair. I appreciate what he had to do as leader.

Mr. ROBERT C. BYRD. I thank the Senator.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the bill *S. 2718*.

Adlai E. Stevenson, Alan Cranston, Jennings Randolph, Patrick J. Leahy, Robert C. Byrd, Claiborne Pell, Jake Garn, John Heinz, Lawton Chiles, Joseph R. Biden, Jr., Paul E. Tsongas, Max Baucus, Lloyd Bentsen, Henry M. Jackson, Bill Bradley, Robert Dole, Rudy Boschwitz, Dennis DeConcini, Thomas F. Eagleton, John C. Danforth.

Mr. STEVENS. Mr. President, may I ask the leader to respond to a question? I have just finished talking to one Member on our side who I assured there was no reason to come back because we were going to recess tonight and that there would be no possibility of votes tomorrow.

I have not discussed with the distinguished Senator from Wisconsin the question of what might occur tomorrow on this bill in order to qualify it for a vote on the Wednesday we return, a vote on the cloture petition. Would there be any possibility in the leader's mind of any rollcall votes tomorrow if we are in for the purpose of qualifying the vote for cloture on the following Wednesday?

Mr. ROBERT C. BYRD. If the Senate can complete action on ERISA this evening, there *is still a possibility* that ERISA may be called up—Senator WILLIAMS is working on the matter—if that is disposed of this evening, that is the only question mark, with respect to ERISA. There might be a vote on that. There might be a vote on tomorrow.

Mr. STEVENS. We may not even get that bill tonight, to my understanding. I thought we had an understanding that if we finished these other matters there would not be any votes tomorrow.

Mr. ROBERT C. BYRD. We had an understanding that with the other matters, as the Senator said, including the Export Trading Act, we would go out tonight and go over until Wednesday, a week from tomorrow. But the Senator from Wisconsin is exercising his right under the rules and does not wish to let the Senate act on the measure tonight or tomorrow, which, as I said, is within his right.

Certainly, he can keep the Senate from voting on the measure today or tomorrow. But other than the possibility that there would be a vote on ERISA, I have no intention to have any vote on anything else. The Senator from Wisconsin would have to speak for himself as to whether or not he would call for a rollcall vote on anything else, such as a motion to recess.

Mr. PROXMIRE. I certainly would not. I want to do all I can to avoid a roll call. I promise that I will do everything I possibly can. It is my understanding that the purpose of going out tomorrow was to enable Senators to get that extra day. I cannot understand why we cannot act on ERISA tonight. If we cannot act on ERISA tonight, why not act on it when we come back?

Mr. STEVENS. I believe we can dispose of the cloture today by unanimous consent, if it would meet with the majority leader's agreement and the agreement of the Senator from Wisconsin. This Senator intends to leave tomorrow morning to take his last son to college. I do not plan to be here in any event. Our leader has gone, thinking there would be no necessity for being here tomorrow.

Mr. PROXMIRE. I have no objection at all, if the Senator wants to forgo that *additional day, concerning* the cloture motion. That would be fine.

Mr. ROBERT C. BYRD. I appreciate the willingness of the distinguished Senator from Wisconsin to allow the Senate to proceed to a vote on cloture a week from tomorrow even though the Senate will not be in tomorrow. Therefore, I ask unanimous consent that if the Senate goes out today and does not come in tomorrow, the vote occur on Wednesday a week from tomorrow under the cloture rule as though the Senate had been in session on tomorrow.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. The only thing that possibly remains is the *ERISA*.

Mr. STEVENS. We will do our best to help the majority leader work through that problem. As I said, I must leave tomorrow morning.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

Mr. PROXMIRE. Mr. President, as I was saying, Mr. Emil Sherer Finley *is president and chief executive officer of* a tremendously successful export company which has increased their exports by over 9,000 percent in the last relatively few years. He has a company which now has a volume of close to a quarter billion dollars. He obviously is qualified to talk about exports and how to increase them. He has far, far more experience than anybody in this body. He said this, in the course of his presentation to the Senate:

In many of these papers, I have described typical Webb-Pomerene associations and have shown that, contrary to the generally

accepted concept, the expansion of the Webb-Pomerene Act's antitrust exemption will not stimulate an increase in our exports. As we all know, this exemption was intended by Congress originally to enable small U.S. businesses to compete against the then prevailing European cartels. Contrary to this intent, this exemption has enabled in fact, large U.S. companies to form cartels of their own, most often in the areas where there is practically no foreign competition. Moreover, this exemption has discouraged, and not encouraged, competition and has led, and continues to lead, to further U.S. cartelization and control over the flow of U.S. exports.

What he is saying is that the Webb-Pomerene Act and the kind of action that we would take under the bill that is pending would discourage competition. This expert on exporting, this man who has been such a smashing success, has said that it would lead to further U.S. cartelization and control over the flow of U.S. exports.

He says this:

If exports are being restrained now, as they certainly are, they would be restrained even more if such bills were to pass. The most disturbing fact about all this is that the Webb-Pomerene associations benefitting from antitrust exemptions are composed mostly of members which, together, dominate also our domestic scene. Their immunized actions taken with respect to export pricing and setting quotas have a direct and adverse effect on the domestic market which they are able to influence simultaneously. Thus, our farmer, our worker, our tradesman and, of course, our consumer, is forced to pay higher prices for the product.

The 1967 FTC study and hearings on the operation of Webb-Pomerene conducted by the U.S. Senate demonstrated how little that Act and its antitrust exemption have done to encourage U.S. exports since 1916. To stimulate U.S. exports, we do not need the continuation and expansion of an act which encourages anti-competitive behavior.

We need, instead, to recognize that our failure to gain our appropriate share of the export market is due to this very anti-competitiveness which, in turn, contributes dramatically to our overall declining productivity, inflation and much, much higher domestic prices of products.

The companies who need it the least benefit from the anti-competitive blessing of Webb-Pomerene and have produced hordes of witnesses to testify about the desirability of continuing that blessing. The general public who will be adversely affected cannot usually muster the resources to make its voice heard.

Our export markets will expand with more—not less—competition. Companies such as ours can contribute to the give and take of the marketplace if they are allowed to.

Now, Mr. President, I would like to refer to Dr. Henry Wallich, who is, as we all know, a Governor of the Federal Reserve Board, their expert in this area, and the Federal Reserve Board's witness before our committee. Dr. Wallich is a former professor at Yale University. He was a columnist who has appeared in Newsweek. He is recognized as one of the most eloquent economists in the country and certainly an expert on banking and an expert on international economics. He is about as well-qualified as anybody on the Federal Reserve Board could be to speak on this. He is probably the most accomplished and widely respected professional economists on the Federal Reserve Board.

In appearing before our committee, this is what Dr. Wallich had to say:

I am pleased to submit a statement on S. 2379, a bill that is designed to facilitate the formation and operation of export trading companies. My statement on behalf of the Board of Governors is limited to the section of the bill that provides for bank investment in trading companies.

Of course, that is the section that concerns this Senator and that is the section which our amendment would address. Continuing:

The Board strongly supports the view the United States needs a strong export sector, and I have been concerned that exports are sometimes hampered by Government regulations. It is noteworthy that under such handicaps, U.S. exports have nevertheless grown rapidly in the last several years.

Mr. President, Dr. Wallich is the outstanding expert on this matter at the Federal Reserve and generally. He does points out in his statement that he favors a strong export center, as does the Board itself. The exports have grown rapidly in the past several years under severe handicaps. But he does say this:

This growth however has reflected in good part the depreciation of the dollar, and the improved competitive position of the United States that has resulted, as well as the benefits from the expansion of economic activity abroad. Over the past two years exports have increased 50 percent in value and 20 percent in volume, with strong performances in both agricultural and manufactured goods.

Mr. President, consider that. Over the past 2 years, exports have increased 50 percent in value and 20 percent in volume. You would think, from the tears shed by the supporters of this bill, that exports were on their last legs, that exporters were really suffering. But in this recession, in spite of all the other difficulties that we have, in spite of the fact that inflation makes it very difficult for exports, over the past 2 years, exports have increased 50 percent in value. That is 50 percent. And 20 percent in physical volume, with stronger performance in both agriculture and manufactured goods.

We should expect that growth in our exports will depend in part on growth in the main markets in which we sell. Thus, as economic activity slows abroad, we should expect growth in our export sales to slow also, although we still look for some increase in exports of manufactures this year. Further growth in exports and a narrowing of the U.S. trade deficit in the years ahead will depend on our ability to bring inflation under control and to establish an environment favorable to growth of productivity and the international flows of goods and services.

Every economist who testifies, particularly the highly competent economists like Dr. Wallich, point out that if we are going to increase our exports, we do it by improving our situation on inflation, holding our prices down, and that means, of course, improving our productivity. Nobody argues that export trading companies are going to play any part except maybe a modest, negative part in that. In fact, they may do more harm than good as far as our productivity is concerned and increasing our competitiveness and thereby holding down prices through competition; they will reduce, not increase our capacity.

Dr. Wallich goes on to say:

Among the measures already taken to strengthen U.S. exports are certain actions by the Federal Reserve to increase the capabilities of Edge Corporations to provide international banking services. I recently reviewed these measures before this Subcommittee. These changes in rules for Edge Corporations were in response to the Congressional mandate in the International Banking Act, and were designed to help the financing of exports. One change expanded the powers of Edge Corporations by permitting them to finance the production of goods for export. A second change permitted Edge Corporations to establish domestic branches, thereby increasing the possibilities for international banking services to expand into new areas. In the nine months since this change in Board regulation, the Board has approved applications for branches of Edge Corporations in 11 cities, including five cities in which no Edges have previously operated. A number of other applications for Edge Corporations are anticipated over the next few months.

The concrete benefits of these actions in expanding international banking services, and in particular in facilitating the financing of U.S. exports will, of course, be observed only gradually. But we believe that they may be significant over the longer run.

The bill before this committee—

He is talking now about the bill before the Senate—

seeks to strengthen U.S. exports by facilitating the establishment of export trading companies that could supply and package a range of services necessary for exporting, and that could also engage directly in selling goods for export. It would enlist the support of U.S. banks for both types of activities by permitting banks and Edge Corporations to invest in export trading companies. In this connection it might be noted that although banks and Edge Corporations cannot now invest in such trading companies, bank holding companies are permitted to hold up to 5 percent of the stock of nonbanking companies as passive investments.

The Board shares the view that banks have expertise in some of the areas noted in the bill. U.S. banks can now provide, either directly or through their Edge Corporations and affiliates, a wide variety of services relating to exports. In addition to a full range of financing services, these include foreign exchange facilities, information on foreign markets and economies, introductions, business references, and advice on arranging shipments. A number of U.S. banks with sizable networks of international banking and financial facilities have substantial expertise in these areas. Moreover, the provision of these advisory and ancillary services are a useful adjunct to international financing, which is the principal business of many banks and of Edge Corporations. Edge Corporations have wide latitude under the law to provide advisory services relating to exporting. In addition, in the case of uncertainty about the permissibility of certain activities, Edge Corporations may apply under the Board's procedures for permission to broaden the scope of the export-related services that they offer.

Mr. President, what all this says, of course, is that under present law, pres-

ent practice, there is a great deal that can be done without changing the law to provide bank financing or exports and to bring the expertise of banking and the assistance of banking into the act.

Then what does Dr. Wallich say? Of course, he is the authority on this as the representative of the Federal Reserve Board in this area. He says:

No requests of this sort have yet been received. The Board would of course review any such applications carefully in the light of all the surrounding circumstances.

Extension of the investment powers of banking institutions to include companies that buy and sell goods and services for their own account would go far beyond these existing financial facilities. Such an extension would raise basic questions regarding the traditional separation of banking and commerce. This tradition, which stands in sharp contrast to the practice in some countries abroad, helps ensure that banks will remain impartial arbiters of credit and contribute to a healthy competitive environment in the commercial sector.

That one paragraph states the case about as well as it can be stated. This is what we want to do. Those of us who want to modify the Stevenson-Heinz bill want to make sure that we do not have an unnecessary intrusion of banks into commerce so that banks can compete unfairly with industry.

We have had this separation for 100 years. It served us well. Whenever there has been any departure from it, there have been loud and perfectly legitimate and proper and understandable complaints from those who have to compete with a business that is owned by a bank.

It gets all the credit it needs when it is needed, especially in credit crunch periods and, of course, the unaffiliated independent competitor does not get it. So the competition is grossly unfair.

Dr. Wallich goes on to say:

The separation of banking and commerce has a long tradition in American banking. It is embodied in the Bank Holding Company Act, and endorsed by the Board. That tradition has served this nation well in promoting economic competition and a strong banking system. In addition, the Board has several more specific concerns about a breaching of the separation of banking and commerce, as is proposed in S. 2379.

Dr. Wallich, speaking for the Federal Reserve, says this:

(a) The possibility that bank-owned companies or manufacturing companies dealing with them will have *more favorable access* to bank credit than other companies. For example, the associated company might well receive more liberal credit terms such as lower interest rates, longer maturities, and less stringent collateral requirements.

I do not think that anybody who is realistic or has been in business would deny that is what happens. Obviously, if anybody in this Senate were a banker he would be inclined to provide better terms for a bank that his own bank owned. It is natural and predictable. It is what happens over and over again.

Anybody who says that would not happen believes in the tooth fairy. We know that happens.

Dr. Wallich goes on to say:

Moreover, as between otherwise equal potential borrowers, the bank might well make credit available to an associated company but not to others. Thus, there is a potential for unfair competition among trading companies.

I recall so well addressing a group of automobile dealers, they leased automobiles and were in competition with the banks who were also leasing. They made a case that would bring tears to anybody's eyes. No matter how hard they tried or how competitive they were, or how much more efficient, competent, and knowledgeable than the banks, they were beat every time because the banks had the credit and the competitors not associated with a bank did not have the credit.

Dr. Wallich goes on to say:

(b) The exposure of the bank that arises from risks encountered in commercial trading and the holding of inventories. This risk is enhanced when high leveraging is involved as is typically the case with trading companies.

Of course, mainly, the bank will invest a relatively small ownership capital and the borrowing body, trading company, will be highly leveraged, so that the loss which wipes out the entire equity is larger than the capital investment and that is a risk that does not occur just occasionally, but often. That danger is typical, according to Dr. Wallich, and has, of course, is right. He continues:

Margins for error are small in circumstances where the nature of the business necessarily contains the potential for sizable price movements and marked shifts in demands for products. In the case of Japanese banks associated with Japanese trading companies large losses were sustained in one instance where a trading company failed, and difficulties have been encountered by others.

Now, we are always pointing to the Japanese. Everything they do seems to be what we should try to imitate.

There is no question, they have had great success.

But I think Dr. Wallich points to the fact that they take risks, too, that in a specific case do not work out. The trading companies fail and the banks suffer and the banks' stockholders suffer, too.

Often, under those circumstances, if the case is sufficiently bad, it may well be that a bank would have to be bailed out.

Now, as Dr. Wallich goes on to say:

(c) The possibility of conflicts of interest in the exercise of its credit judgment between the bank's fiduciary responsibility to depositors and its ownership interests. Examples of such classic conflicts are legion, the more obvious ones being *where bank management runs undue risks in extending credit to such* an associated company in the hopes that the company will be successful and provide a handsome return to shareholders and hence management; or where it continues to extend credit to an associated company in distress rather than cut its losses.

Dr. Wallich points to the increased complexity of the bank supervision:

For bank supervisors, as for bank management, there are very substantial differences between supervising banking and financial activities and supervising commercial enterprises, which involve risks that must be evaluated and controlled on the basis of specialized knowledge and expertise.

The Board would be concerned about this legislation also because of the precedent that would be established. In today's environment, with rising prices for energy and the need for painful cuts in many areas of the economy, pressures might well arise for banks to make investments in areas where worthwhile *economic and social objectives* are being threatened by the need to economize. Taken alone, each of these objectives might be worthwhile, but in aggregate they could represent a substantial claim on bank capital

To summarize very quickly what the *Federal Reserve Governor* is saying is that these are dangers.

First, the possibility that bank-owned companies, or management companies dealing with them, will have more favorable access to bank credit than other companies.

Second, the exposure of the bank to areas of *some* risk encountered in commercial trading and the holding of inventories.

Three, the possibility of conflicts of interest in the exercise of its credit judgment between the bank's fiduciary responsibility to depositors and its ownership interests.

Finally, the increased complexity of bank supervision.

Now, Dr. Wallich says:

The Board would be concerned about this legislation also because of the precedent that would be established. In today's environment, with rising prices for energy and the need for painful cuts in many areas of the economy, pressures might well arise for banks to make investments in areas where worthwhile economic and social objectives are being threatened by the need to economize. Taken alone, each of these objectives might be worthwhile, but in aggregate they could represent a substantial claim on bank capital.

We need to remember that bank capital is low already—about $90 billion for all banks relative to total liabilities of $1.5 trillion.

That means bank capital represents only about 6 percent of a bank's liabilities. That means a decline of 6 percent in a bank's net worth, typically, in the average case, wipes it out. That is the average case. There are many banks which have a far lower capital ratio.

There are banks, as we all know, that have capital ratios that are less than 3 percent.

Now, it is this factor, among others, which makes the Federal Reserve Board concerned about permitting the banks to get into this high risk area of export trading companies where, as I say, the leverage is very high and where bad news for a couple of years could put a bank in very serious danger, particularly if the bank were suffering any other difficulties.

As Dr. Wallich points out:

Capital ratios have been declining over the years, in part as a result of inflation, and there is now little room in bank balance sheets for new generic risks.

This does provide a new generic risk. He says:

If we now encourage banks to divert capital from its traditional role as a support for lending activity and to invest it in nonbanking activities, we are necessarily curtailing the amount of lending that banks can do for other purposes. Bank capital can most productively be invested in supporting banking activity.

Mr. President, I believe we should be very sensitive to that. All of us can re-

call. I believe, how concerned we were at the dearth of capital available to lend to farmers and small businessmen a few months ago, early this year. There was a terrific credit crunch, with very high interest rates. We had many people come to our office and point out what a tough time they had getting credit.

As Dr. Wallich points out, this will make it tougher. The banks already are undercapitalized. They need capital desperately, and their capital is going to be absorbed for this purpose; and it is a purpose which, as I pointed out earlier, the most successful exporters say will not be helpful. In fact, it will be counterproductive.

This is what Dr. Wallich says:

Edge Corporations, banks and bank holding companies may currently engage in some of the activities offered by trading companies. Moreover, the Board has established procedures under the recently revised Regulation K by which member banks, bank holding companies and Edge Corporations can apply to engage in new international activities, and the Board is committed to processing applications in an expeditious manner. Banks are, of course, not permitted to engage in "buying or selling goods, wares, merchandise or commodities in the United States," and the Board has supported this limitation on bank activity.

Mr. President, as we all know, the Chairman of the Federal Reserve Board, Paul Volcker, was overwhelmingly approved by this body a relatively short time ago. I believe most of us feel that he has done a good job under very difficult circumstances as Chairman of the Federal Reserve Board. It is about the only effective inflation fighting agency we have in the Government.

Dr. Volcker has taken unpopular but certainly very strong anti-inflation positions since he has been in office, and I believe that the esteem and respect that Chairman Volcker has has been enhanced by his performance.

Chairman Volcker addressed himself to this subject and wrote me a letter on it several days ago, on August 20. This is what he wrote:

I am responding to your letter requesting a draft amendment to S. 2718, the Export Trading Company Act of 1980, to permit bank holding companies under special circumstances to have a controlling interest in export trading companies while maintaining a general policy that banking organizations should not ordinarily be permitted to control export trading companies.

The principal difference between the bill reported by the Senate Banking Committee and the recommendations contained in my letter of May 12 is that the bill permits U.S. banks to acquire controlling interests in export trading companies. The issue of control is of course an important one. The recommendations in my letter of May 12 would help keep risks to banks at manageable levels provided that the banks had non-controlling investments. It continues to be my view that banking organizations should not generally be permitted to control export trading companies in view of the implicit commitments of bank resources, the increased financial risk that accompany control and the need to maintain the line between banking and commerce.

The issue of permitting banks to extend their area of operations arises, as you know, in many contexts other than export trading companies. Control often carries an implicit commitment by a bank to place the full resources of the institution behind its subsidiary. In many institutions this is a matter of corporate policy, and it is recognized in the market place. As your Committee report notes, a banking organization is more likely to become involved in the management and operation of an export trading company if it has a controlling interest in that company. Although a bank may judge that it can operate an international commercial banking business more efficiently and safely through controlling investments in affiliates, control and the involvement in management in a non-banking business would increase the potential financial risk to the owning banks, and might also increase the likelihood of conflicts of interest.

So we should have our eyes wide open as to what we are doing here, particularly if we do not modify the Stevenson-Heinz bill; because if we fail to modify this bill we are being warned by the Chairman of the Federal Reserve Board—if anybody knows whereof he speaks in this matter, he does—that we will be decreasing the safety and soundness of our banks and we will be creating a situation which, according to the best judgment of the Federal Reserve, is dangerous.

I will read that sentence again, because others may disagree. He says:

Although a bank may judge that it can operate an international commercial banking business more efficiently and safely through controlling investments in affiliates, control and the involvement in management in a nonbanking business would increase the potential financial risk to the owning banks, and might also increase the likelihood of conflicts of interest. This consideration lies behind the recommendation that as a norm bank ownership interest be limited to less than 20 percent.

The Export Trading Company Act seeks to limit these risks by providing that controlling investments by banks be subject to prior approval and statutory safeguard. Prior approval is all we are asking, and we even have tempered that and have been turned down.

It does not have to be the Federal Reserve Board. It can be the consolidated committee that acts together. It can be a combination of the Federal Reserve, the Comptroller of the Currency, and the FDIC acting in concert. We are perfectly willing to permit that and to withdraw our objection, if that can be done.

But we have been told that will not work. We would confine the authority to that particular function; and we have ample precedent, as we have indicated over and again here today, for that kind of transfer.

Chairman Volcker goes on to say:

The Export Trading Company Act seeks to limit these risks by providing that controlling investments by banks be subject to prior approval and to certain statutory safeguards. My concern about the provisions of S. 2718 that are designed to give supervisors powers to step in and prevent unsafe practices is that it would involve the supervisors to a substantial degree in decisions regarding operations of export trading companies. Bank supervisors are not able to anticipate all future eventualities in acting on applications and are unlikely to be able to supervise the operations of export trading companies sufficiently closely to ensure that risks to banks could be avoided, when those risks are magnified by bank control and involvement in management.

Finally, I should note that the sort of detailed supervision of export trading company operations that might be necessary under S. 2718 would be contrary to the philosophy adopted by the Board in its recent amendments of Regulation K, which sought to reduce the need for detailed supervisory review and regulation of international bank operations.

The control issue goes to the heart of concerns that have been long standing in legislation and policy. Apart from its significance in this case, it also would be an important precedent in other areas. Consequently, I continue to feel that legislation in this area should be consistent with the basic presumption that a line be maintained between banking and commerce. In my personal opinion, that concept could perhaps reasonably be bent to recognize some special circumstances that might arise in which limited purpose (and presumably limited in size) export trading companies might be permitted, upon application to bank regulators, to be controlled by a bank. That would accommodate situations where an ETC designed for certain specialized purposes (i.e., for particular projects or rather specialized trade and financing problems) might not be established without the possibility of strong bank sponsorship.

I do not conceive of such an "exemption" from the basic presumption against control being extended to large, general or multiple purpose, export trading companies that would be capable of standing on their own feet without bank sponsorship—able to attract and retain necessary management and expertise and, indeed, ready to do business with competing banks.

And here is another reason, Mr. President, why our amendment makes sense. As Chairman Volcker points out the big export trading companies have no need to be owned by the bank. They could have the bank have 20-percent ownership, but for the bank to have control under those circumstances would serve no purpose. As Chairman Volcker points out, the big export trading companies would have the expertise and the access to the credit market to enable them to do a perfectly adequate and complete job without having the banks get involved.

That is the kind of judgment we would get if our amendment which would require the Federal Reserve or some other single agency to make a decision as to whether or not the ownership over 50-percent ownership by the bank would be necessary to increase exports.

Then, Chairman Volcker goes on to say:

However, there may indeed be certain special circumstances in which the risks associated with bank control of an export trading company would be outweighed in the public interest by the salutary effect the trading company would have in promoting U.S. exports. This situation might exist when particular goods and services currently not being offered in international trade could be marketed by having access to the expertise of a bank assisted export trading company. Further, if the exposure of the trading company (and its bank holding company owner) is reasonable in relation to its activities, it may be in the public interest to permit control of the export trading company. The critical element in any case involving control is the need for bank involvement in the organization and continued operation of such an export trading company. This condition could be met when, for example, the limited size, specialized purpose or temporary nature of the proposed

new export facility makes it unlikely that it could attract the financial management, expert resources and knowledge of foreign markets without the commitment implied by bank control.

This the Chairman of the Federal Reserve would permit and so would I, and so would our amendment, so would the amendment, of course, which is offered really by the Federal Reserve itself.

Chairman Volcker goes on to say:

The export of many products requires a high degree of sophistication and specialized knowledge in the areas of marketing, documentary requirements, financing, etc. In order for a banking organization to control an export trading company, it must bring to the enterprise already existing expertise that is essential to the successful operation of the export trading company. I would expect further that the need for continued bank involvement would be demonstrable on an ongoing basis.

One issue which I have not addressed previously in the context of the control issue is whether, in those cases where the export trading company is to be controlled by a banking organization, it is preferable that ownership reside in the bank or in the bank holding company. This issue was discussed at the Committee's hearings several weeks ago. Limiting controlling interests to bank holding companies would be consistent with the general scheme of Federal banking laws which requires that nonbanking activities be performed by a corporate entity separate from the bank. Also, this approach would be more harmonious with concerns about breaching the line between banking and commerce.

There is an argument that all investments, including those below 20 percent of the export trading company's stock, should be restricted to bank holding companies. However, a good case can be made that passive minority investments of a purely financial nature and with reduced risk to the investor should be permitted for banks as well as bank holding companies.

The enclosed draft amendments to S. 2718 are consistent with the views expressed in the foregoing paragraphs. As a footnote, I would mention that there is no reference in the amendments to a procedure requiring sixty day notification before a banking organization engages through an export trading company in "any line of activity, including specifically the taking of title to goods, wares, merchandise, or commodities, if such activity was not disclosed in any prior application for approval."

That particular part was, I think, taken care of by an amendment offered by the distinguished Senator from Illinois a little earlier.

The last paragraph in the Volcker letter reads as follows:

By permitting bank control of export trading companies only where there is a clear need, I believe the purposes of S. 2718 can be accomplished. At the same time, the concerns I have expressed as to bank exposure would be mitigated by allowing the bank regulatory agencies to review critically any proposal in light of the risks involved. If S. 2718 were amended to permit bank holding company control in these limited circumstances, I would be prepared to support this legislation.

This is precisely the amendment that I am offering. The amendment is suggested by the Chairman of the Federal Reserve Board. In spite of all the perfectly legitimate thoroughly understandable concerns he has about bank involvement in this area, the Chairman of the Federal Reserve Board has not only said that the banks should be allowed to control 2 percent of an export trading company, but he goes further than that. He says they should be allowed to control and, as a matter of fact, even 100-percent control under our amendment, but they should get the approval of the Federal Reserve Board before that, and the argument between the Senator from Illinois and the Senator from Wisconsin is whether or not a single agency, and I have suggested both the Federal Reserve Board and the Examination Council, either one—we will take either one of them—should be the agency that can make the decision. Otherwise, we have a competition in laxity which is most unfortunate.

Mr. President, just today, August 26, the Vice Chairman of the Federal Reserve Board, Mr. Schultz, wrote me a letter on this matter. It is a short letter, and I think the Senate should be aware of this letter because I think it is of considerable importance. He writes as follows:

In the absence of Chairman Volcker, I am writing to comment on an issue related to S. 2718, the Export Trading Company Act of 1980. It is our understanding that consideration will be given to permitting national banks in special circumstances to have a controlling ownership interest in an export trading company.

While supporting legislation to permit a bank holding company to acquire a controlling interest in certain limited circumstances, as set forth in Chairman Volcker's letter of August 20, I would be opposed to allowing banks to acquire such a controlling ownership interest primarily for safety and soundness considerations.

Our experience indicates that a bank may feel obligated to bail out a troubled subsidiary, particularly when it is wholly-owned. The use of a bank's funds to rescue a troubled ETC could have a substantially adverse effect on the financial condition and future operation of that bank. By placing controlling interest of ETC's in the bank holding company, the bank would be better insulated from the uncertain risks of this new operation. The insulation from the bank is more complete in the bank holding company because of existing statutory restrictions on the amount of funds a bank holding company can take from its subsidiary banks.

It goes on to say:

It should also be noted that almost all of the banks that would be likely to control an ETC are part of bank holding companies. Moreover, most of these bank holding companies would appear to posses the financial capacity, independent of their bank, to make the necessary capital investment needed to organize and operate an ETC.

Finally, I would note that S. 2718 draws substantially from provisions of the Bank Holding Company Act, particularly those that deal with the nonbanking activities of bank holding companies. Over the years the Board and its staff have developed considerable expertise in administering the Bank Holding Company Act—expertise which would be valuable in supervising and regulating this new area of banking organization activity. Authorizing control to be acquired only at the bank holding company level would take advantage of that expertise as well as promote safety and soundness and uniform administration of the Act.

Mr. President, for the life of me I cannot understand what is wrong with that, with having bank holding companies serve as the device by which the banks could own and control 100 percent, under the circumstances where that is necessary, the export trading company. That would permit us to have a situation where the Federal Reserve Board, as Vice Chairman Schultz has pointed out, has the expertise, has the experience, in dealing with the bank holding company agent, and it would permit maximum protection of the banks because the bank holding company would be the agency that would own the export trading company, not the bank itself.

The expertise would be involved, the financing would be involved, the conflict of interest would be sharply reduced, the unfair competition would be reduced, and all of the positive and constructive benefits that could go to export trading companies would go to them under the Federal Reserve amendment.

So I hope when the Senate votes on this a week from tomorrow, when we return, they will keep this in mind and permit us to have a vote up and down on the Federal Reserve amendment, without having it, through some parliamentary device, prevented by some intervening amendment or something of the kind.

Mr. President, I suggest the absence of quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

Mr. STEVENSON. Mr. President, much has been said, not by me, about the competitiveness of the United States. I do not see how there can be much doubt about the decline which has set in. I do not, however, want to prolong this debate. But for those who are interested, I ask unanimous consent that a statement of Michael Aho, Director of the Office of Foreign Economic Research of the Bureau of International Labor Affairs in the Department of Labor, be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF MICHAEL AHO

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear here today to discuss a subject of vital concern: the international competitiveness of the United States. You and the other members of the Committee are to be complimented on your excellent work investigating factors which contribute to the competitiveness and long-run health of the U.S. economy.

As background for the Administration's review of U.S. competitiveness mandated by section 1110(b) of the Trade Agreements Act of 1979, my office prepared five background analyses on different aspects of U.S. international competitiveness. The Administration's report will be released shortly. Today, I

would like to discuss the results of our research studies. I am submitting the executive summaries of the five studies and a short paper for the record.

Over the past two decades, the United States has suffered an erosion in its competitive position in world markets and in the domestic market. This conclusion is based upon extensive empirical research which analyzed the trade of 34 countries in over 100 commodities. The increased international competition facing U.S. producers is mainly the result of changing world resource supplies and technological capabilities. Because of higher rates of growth in investment and expanded research activity in other countries, the United States has experienced a relative decline in its trade performance over the past two decades.

To some degree this is to be expected because the United States emerged from World War II with its industrial base intact, giving it a unique position in the world economy. That unique position has disappeared with the more rapid growth of investment, skilled labor, and most recently, research and development efforts by other countries. This rapid growth has narrowed the range of products in which the United States has a decided competitive advantage.

Every day we read about increased competition in traditional industries like steel and autos that has caused adjustment problems for workers, firms and their communities as some plants have been forced to close down or reduce production as a result of increased import competition. At the same time the United States is also experiencing increasing competition in high technology industries like aircraft and computers which have historically been our strength. Furthermore, it is likely that this competition will continue and increase in the 1980s because of the higher rates of investment and the increased technical effort by our major competitors.

We at the Labor Department are very concerned about the long-run competitive structure of the U.S. economy. The decline in U.S. trade performance increases our concern about the competitive position of U.S. industry because changes in trade performance are a leading indicator of changes in the competitiveness of our domestic economic base.

In conducting our research we examined, at both an aggregate and a highly detailed commodity level, the competitiveness of U.S. producers in world markets. We examined both the short-term, and the more subtle long-term, changes in this competitiveness. A variety of measures and indicators were used to examine and assess changes in competitiveness and the structure of trade.

Our results provide statistical support for many of the assertions made in the popular press that the United States has suffered a deterioration in its competitive position and that Japan is one of the principal sources of increased competition in many key U.S. export products. However, like most issues, there is evidence showing positive as well as negative developments. Therefore, let me present some evidence on both sides.

Among the positive developments in the international competitive position of the United States are the following:

Over the decade of the 1970's the volume of total U.S. exports increased by the same amount (80 percent) as the average of the other seven major industrial countries. Manufacturing exports expanded by 79 percent compared to 85 percent for the other major industrial countries.

Capital goods showed a record trade surplus of $32.6 billion in 1979.

Agricultural goods also had a record trade surplus of $18 billion in 1979.

Manufacturing exports increased by 23 percent in 1979, compared to 17 percent for our major competitors.

Among the negative developments:

Net trade: The United States had a trade balance deficit for 6 years during the 1970's and a deficit in manufacturing for 3 years. On a disaggregated commodity level, net trade is theoretically the best indicator of competitiveness. Of the major export categories, the United States has gone from being a net exporter to a net importer in several important categories including automobiles, telecommunications apparatus and inorganic chemicals.

In 1979, five of the seven major industrial countries had larger trade surpluses in manufacturing than the United States. Among the major industrial countries, we maintain a bilateral trade surplus in manufactures only with Canada. The bilateral deficits in manufactures trade are largest with Japan (—$17 billion) and Germany (—$5 billion).

Loss of export shares: Although trade is becoming increasingly important to the U.S. economy, the United States is playing a relatively smaller role in the world economy. Our analysis of U.S. export market shares for 102 manufactured commodities indicated that since the 1960's, the United States had trend declines in 71 percent of the commodities compared to 26 percent for Japan and 24 percent for West Germany. Most of the U.S. declines occurred in the 1960's with the 1970's representing mostly a period of stabilization but at reduced levels.

Among the top five U.S. manufacturing export earners (road motor vehicles, non-electrical machinery, aircraft, other electrical machinery, and office machines (computers)), only aircraft had an increase in its export market share. In many of the traditionally strong U.S. exports, the decline in share had been greater than the decline in the share of overall manufacturing.

Increased competition from foreign producers in the domestic market:

Import penetration ratios have increased in many of the important manufacturing sectors, including inorganic chemicals, electric power machinery, power genetrating machinery and automobiles.

Erosion of our competitive position in formerly strong export commodities in third market areas:

A comparison of U.S. export performance with that of four major competitors (France, Germany, Japan and the United Kingdom) in common third markets showed that of the top 17 U.S. export commodities, 14 experienced share losses in the world market between 1962 and 1969, and all 17 showed losses to these competitors between 1970 and 1977.

The research also focused upon trade performance in high technology products which, along with certain agricultural products, have traditionally been a principal source of strength in the U.S. trade balance. High technology products include aircraft, computers, and many chemical and machinery products.

Our findings indicated that the United States still has a comparative advantage in technology-intensive products in world markets. In particular, when compared to its major competitors, the United States still has: (1) a greater concentration of high-technology exports; (2) one of the largest export market shares in high-technology products; (3) the greatest technological content in its exports, and, thus, more high-technology products among the products which characterize its comparative advantage.

There are several indications, however, that U.S. dominance in world trade of high-technology products is being eroded. This is troublesome because these are the sectors which contribute the most to productivity growth and holding down inflation. The indications of this erosion are:

The U.S. export market share in technology-intensive commodities has fallen over time. In 1977, the U.S. share fell to second behind Germany, whose share had remained roughly constant since the early 1960s. During that period Japan's share quadrupled to a point where it was just behind the United States and Germany.

The decline in the U.S. share and the improved performance by Japan and Germany were present throughout the entire period even aftr exchange rate realignments began in 1971.

Many high technology products show continuing increases in their import penetration ratio that are more rapid than for manufacturing as a whole. Several of the technology-intensive products had such a rapid growth of imports relative to exports that the United States became a net importer of these products.

The Unitd States is losing out to competitors in some of its traditionally strong products in third market areas.

Among the major U.S. competitors, Japan exhibits the most dramatic change in trade performance in technology-intensive commodities. Between 1962 and 1977, the share of technology-intensive products in total Japanese exports and the technological content of Japan's exports more than doubled. Japan now has the largest trade surplus in technology-intensive products. In the 1960's Japan's trade performance in high technology products ranked low among Organization for Economic Cooperation and Development (OECD) countries. Since then, Japan has risen to second, behind only the United States as an exporter of technology-intensive products. Finally, Japan has begun to compete successfully in technology-intensive products with the United States and other major countries in third market areas, where all competitors face the same market conditions.

The rapid growth of Japanese exports of technology-intensive goods and the growing share of Japan's exports to markets that were traditionally dominated by U.S. producers, demonstrate that Japanese competitiveness in technology-intensive goods is increasing. Consequently, Japan has joined the United States in having a competitive advantage in technology-intensive products, and this implies that competition between the two countries in these products will increase in the future.

What factors are responsible for this decline in U.S. international competitiveness?

The factors which can affect the international competitive position are manifold. They include: (1) the longer term factors which affect cost, investment in newer capital equipment and innovation and technical change; (2) input costs, including the effects labor-management relations; (4) policies of other nations such as trade barriers and in-

of taxation policy and energy costs; (3) industrial policy; (5) a number of largely nonquantifiable factors related to the product, including quality, delivery time, servicing; (6) managerial initiative and objectives, including entrepreneurial effort in developing new markets, devotion to quality control, etc.; (7) finally, U.S. export promotion policies as well as policies which inhibit exports.

A consistent explanation emerging from our analysis is that the decline in U.S. trade performance since the early 1960's is the result of changing world resource supplies and technological capabilities. These changes are the result of differences in the rates of growth across countries of net investment in equipment and research activity, and the acquisition of skills through education and other training.

Capital available per worker in the United States grew at an annual rate of 1.7 percent between 1963 and 1975, well below that of other developed countries and many of the major developing countries. The percentage of skilled workers in the U.S. labor force grew at an annual rate of 1.3 percent between 1963 and 1975, also below that of most countries.

This relatively slower growth in U.S. capital and skilled labor, along with differences in the growth of these resources in other countries, has altered the distribution of resources among countries and has thereby expanded the capabilities of many countries to supply products to the world market.

The U.S. share of world capital fell from 42 percent in 1963 to 33 percent in 1975. By comparison, Japan's share of world capital increased twofold over the same period, from 7 to 15 percent. The U.S. world share of skilled labor fell from 29 percent to 26 percent; its world share of arable land, however, increased from 27 to 29 percent.

The decline in the U.S. share of the world's capital stock is the result of slower real growth in the United States combined with the fact that the United States allocated a smaller proportion of its national income to investment than its major competitors. In 1978, the United States allocated only 7.3 percent of its gross national product (GNP) to gross fixed capital formation in machinery and equipment whereas Japan allocated 10.9 percent, Germany 8.9 percent, France 9.1 percent, and the United Kingdom 9.2 percent. In terms of total gross fixed capital formation, the United States allocated 18.1 percent, Japan 30.2 percent, Germany 21.5 percent, France 21.5 percent, and the United Kingdom 18.1 percent.

The share of U.S. output devoted to research and development declined from 2.97 percent to 2.27 percent between 1964 and 1977. Japan's share rose from 1.48 to 1.94 percent; Germany's rose from 1.57 to 2.26 percent.

Research and development and investment in skills and capital equipment are factors which affect the long-run competitive position of a country and they are also the major sources of productivity growth. In recent years, U.S. productivity growth has slowed in manufacturing and it lags behind that of all of our major foreign competitors, except the United Kingdom. Over the last decade, manufacturing productivity in the United States increased by an average of 2.5 percent per year. In Japan, the average increase was 5 percent, in West Germany, 5.5 percent, in France, 4.5 percent, and in Canada, 4 percent.

This more rapid growth of capital, skilled labor, and technical resources by other countries relative to the United States has intensified competition in traditionally strong U.S. export products and has narrowed the range of products in which the United States has a competitive advantage. This competition will continue and increase in the 1980's because the United States continues to lag behind other countries in net real investment growth and because of the relative decline in our research and development effort.

With these results in mind, let me raise a few policy issues.

INDUSTRIAL POLICY

The United States does not have an explicit industrial policy, but to the extent that our major competitors adopt industrial policies, and target their industrial development, we are faced with the results of their industrial policy. For example, the focus of Japan's industrial strategy for the 1980's is to develop high technology industries as their next source of industrial strength. If this industrial targeting is successful, then the competition from Japan we are currently experiencing will increase. The semiconductor industry has already become a source of some concern.

It is imperative that our policies be directed toward enhancing the competitiveness and flexibility of U.S. industry so that we can respond to this challenge. Enhancing the competitiveness of high technology, export-oriented firms will increase the demand for higher skilled and more productive workers. But we cannot overlook the adjustment problems created by the internationalization of our economy.

ADJUSTMENT PROBLEMS

In order to export, the Nation has to import. If policies were to be adopted to restructure industry and to encourage the exports of high technology products, we need to recognize and deal with the adjustment problems created by such a policy. The workers in more traditional, import-competing industries are on average less skilled, less educated, lower paid, older and more like to be female or members of minority groups. (See Table 1). In short, those workers who would have to bear the brunt of the adjustment burden are least able to afford it. They are also the least occupationally mobile. This contrasts sharply with the higher skilled and better educated workers needed in the higher technology industries and suggests that training and adjustment programs may be necessary to facilitate the transfer of displaced workers. More should be done to retrain and to help these workers to adapt their skills to new occupations in other industries. The Department of Labor is presently designing a pilot project to determine the feasibility of providing readjustment to displaced workers.

INTERNATIONAL TRADE AGREEMENTS

The nontariff barrier codes, particularly on government procurement and subsidies, which were agreed to during the Multilateral Trade Negotiations, need to be implemented and the ensuing developments closely monitored. In industries such as telecommunications and information processing, the governments in other countries often serve as the purchasing agent. Since the United States has traditionally had a competitive advantage in these industries, we must ensure that U.S. firms have access to foreign markets on an equal footing with local competitors in these markets. There are many potential problems involved with trade in higher technology products which may require new negotiations and new negotiating strategies. In order to learn more about the problems, the Department of Labor is cosponsoring a research project with the Office of the U.S. Trade Representative to examine the potential for negotiations.

LABOR, MANAGEMENT, AND GOVERNMENT COOPERATION

Some influence on the competitive position of the United States lie outside the immediate realm of policy. One of these areas is labor-management relations. Differences among nations in the degree to which labor and management cooperate with one another can have an effect on the international competitiveness of their firms and industries. This seems to be the case in Japan and Germany, which have had the best trade performance in recent years and where labor and management cooperate closely with one another.

Close cooperation between labor and management can allow them to address mutual problems which interfere with productivity growth. The United States should encourage joint efforts on the part of labor and management to improve productivity which in turn can have a direct effect on U.S. competitiveness in world markets. Joint efforts could also help to smooth the process of adjustment to economic change.

An effort in tripartite cooperation among labor, management and Government has been begun in the steel industry with the formation of Steel Tripartite Advisory Committee. The Committee is concentrating its efforts on community adjustment, productivity improvement and industrial modernization. A similar tripartite effort is included as part of the President's economic program for the automobile industry. As these efforts proceed, they should provide the experience needed to assess the applicability of cooperative approaches for U.S. industry. In order to otain a more in-depth look at labor management relations and adjustment policies in other countries, the Department of Labor is cooperating with the Japanese Ministry of Labor on a research project which involves cross-national comparisons and on-site visits.

Let me conclude by observing that competitive advantages does not remain constant. Research and development and investment in capital equipment and labor skills are key factors which affect the long-run competitive position of a country and they are also the major sources of productivity growth. To the extent the United States undertakes less real investment and devotes less resources to research and development than its major competitors, then the long run international competitiveness of U.S. industry will be reduced. Over time, larger capital expenditures overseas in newer facilities will enhance the competitiveness of foreign firms. Increased research and development will enable them to develop newer products and processes with which U.S. firms will have to compete. Although depreciation of the dollar will make U.S. products look more attractive in world markets, this will reduce our real income and overall welfare at home. Not doing enough to lower costs and develop newer, higher quality products may lead to a long-run structural decline in the U.S. competitive position in manufacturers and even in high-technology manufactures.

The United States needs to encourage investment and research to prevent such a decline. Expanded investment and innovative activity would not only affect U.S. long-run competitive advantage, but would also contribute to the productivity growth which is necessary for the Nation to enjoy real income gains in the future.

Mr. Chairman, this concludes my prepared statement. If the Committee has any questions, I would be happy to answer them.

CHARACTERISTICS OF THE INDUSTRIES IN WHICH TRADE HAD THE LARGEST POSITIVE AND NEGATIVE IMPACT UPON JOB OPPORTUNITIES, 1964-75

	Average of the 20 industries in which trade had the most favorable impact on job opportunities*	Overall manufacturing average	Average of the 20 industries in which trade had the least favorable impact on job opportunities
Demographic characteristics of the labor force (percentage): [1]			
Female	21.5 (23.2)	29.4	41.1
Minority	7.4 (6.0)	10.1	11.5
Under 25 yr old	15.4 (15.2)	16.4	15.8
Over 50 yr old	24.4 (23.8)	26.5	28.6
Family income below the poverty level	5.8 (4.1)	7.0	9.6
Annual earnings under $10,000	72.1 (70.0)	77.4	81.7
Annual earnings under $12,000	83.5 (82.2)	87.2	89.7
High school education (4 yr)	39.1 (40.8)	36.6	34.0
College education (4 yr)	6.9 (7.6)	5.1	3.1
Occupational breakdowns and industry characteristics:			
Unionized workers as a percentage of the labor force [1]	40.0 (39.8)	45.0	51.3
Skill measured as a percentage of the average wage in manufacturing (1973) [2]	104.0 (105.2)	100.0	97.8
Skilled workers as a percentage of the labor force [3]	55.8 (59.2)	50.0	38.8
White collar workers as a percentage of the labor force [4]	36.3 (39.4)	30.3	21.1
Technical intensity (scientists and engineers as a percentage of the labor force) [5]	6.87 (7.75)	3.20	2.29
Technical intensity (R. & D. as a percentage of sales) [6]	5.90 (6.58)	2.36	1.39
Foreign direct investment proxy (foreign dividends plus tax credits as a percentage of firm's assets) [7]	.53 (.55)	.34	.52

*The weighted average in parenthesis is calculated by excluding veneer and plywood; sawmills and planning mills; and logging. These industries should be considered separately due to their relatively high natural resource content and geographic concentration of production.

[1] Source: Census of Population, 1970, Subject Reports: Industrial Characteristics, U.S. Department of Commerce, 1972. (Washington, D.C.: U.S. GPO).

[2] Source: Freeman, Richard and James Medoff, "New Estimates of Private Sector Unionism in the United States," Industrial and Labor Relations Review, vol. 32, No. 2, (January 1979).

[3] Source: Employment and Earnings, U.S. Department of Labor. Index is the average hourly wage in the industry divided by the average hourly wage in manufacturing.

[4] Source: Census of Population, 1970, Subject Reports: Occupations by Industry, U.S. Department of Commerce, 1973, (Washington, D.C.: U.S. GPO) Skilled workers are defined to include professionals, managers, sales, clerical and craftsmen.

[5] Source: Same as 4. White collar workers include all defined as skilled except craftsmen.

[6] Source: C. F. Bergsten, T. Horst and T. Moran, American Multinationals and American Interests, (Brookings Institution: Washington, D.C.) 1978, table 3-2.

[7] Source: R. Kelly, "The Impact of Technological Innovation on International Trade Patterns," Staff Economist Report, ER-24, Department of Commerce (December 1977).

[8] Source: Bergsten, Horst and Moran, table 3-2.

[9] Median.

Source: C. M. AHO and J. Orr, "International Trade and Domestic Employment: Characteristics of Workers in Trade-Sensitive Industries", Economic Discussion paper 2, Office of Foreign Economic Research, Bureau of International Labor Affairs, Department of Labor, April 1980.

Summaries of Recent Analyses on U.S. International Competitiveness and the Changing Structure of U.S. Trade

(By Thomas O. Bayard)

Trends in U.S. trade: 1960-78

Executive summary

International trade is becoming increasingly important to the U.S. economy. A common measure of the domestic significance of foreign trade, the ratio of U.S. exports plus imports to GNP, has risen from 10 percent in 1960 to almost 22 percent in 1979. This report summarizes the most important trends in U.S. trade since 1960 and attempts to assess the impact of changes in macroeconomic factors such as real GNP growth, inflation, and exchange rate changes on U.S. trade flows.

Although trade is becoming increasingly important to the U.S. economy, the United States' role in the world economy is becoming smaller. The U.S. share of total world exports declined from 18 percent in 1970 to 14 percent in 1979. The U.S. share of world exports of manufactures fell from 21 percent to 17 percent in the same period. The United States experienced a substantial loss of market share in the import markets of Japan and the developing countries, but increased its share of centrally planned economies' imports in the 1970's.

The United States had small surpluses in its agricultural trade in the 1960s. Agricultural exports soared in the 1970s, mainly on the strength of increased exports to the developed countries and, especially, to the centrally planned economies. The surplus averaged well over $10 billion since the mid-1970s. In 1979, the U.S. agricultural trade surplus reached a record of $17.9 billion.

Because of the importance of U.S. manufactured exports and imports in total trade, the manufactured goods trade balance has tended to coincide with the movements in overall trade balance and to be influenced by the same macroeconomic trade factors. The surplus in manufactures declined through the late 1960s and a deficit emerged in 1972. Since then, there have been wide fluctuations in the manufactures trade balance. In 1979, the United States had a surplus of more than $4 billion in manufactured products.

The United States trade position in manufactures has been particularly strong in capital equipment and high-technology products. Both of these designations frequently apply to the same product category (e.g., advanced electrical machinery). In 1979, the United States trade balance in capital goods reached a record surplus of $32.6 billion. There is evidence, however, that the United States is losing its lead in high technology exports in recent years; in large part to Japan. Although U.S. exports of consumer and automotive products have grown rapidly in recent years, import gains have kept ahead of those of exports and the trend since the 1960's has been toward greater trade deficits in these products.

The United States ran small trade deficits in petroleum and petroleum products through the 1960s. The emergence of OPEC as a successful cartel was in part due to the growth in U.S. (and Western) dependence on energy imports. Both the volume and the price of oil imports tended to increase in the early 1970s, although the volume of imported oil has dropped significantly over the last two years. Recent declines in U.S. oil import volumes have been more than offset by rapid price increases. The oil deficit grew from $3 billion in 1971 to $55 billion in 1979 and has had a dampening effect on U.S. economic growth.

The U.S. trade surplus with the developed countries (DCs) declined through the 1960s. Deficits emerged in the late 1960s and early 1970s. In 1979, however, a large improvement took place in the U.S. trade position vis a vis developed countries because of a substantial increase of U.S. exports to these countries.

The less developed countries supplied 45 percent of total U.S. imports in 1979 compared with only 26 percent in 1972, primarily because of the rapid rise in oil imports. The LDC's share of U.S. exports rose from 31 percent in 1972 to 37 percent in 1979.

Changes in the International Pattern of Factor Abundance and the Composition of Trade: A Multi-Country Analysis of Changing Comparative Advantage in Manufactured Goods With Special Reference to the United States

(By Harry P. Bowen)

Executive summary

This paper assesses the role of changes in relative resource supplies across countries as an explanation of the changing structure of U.S. trade and the growing competition to United States producers in international markets since the early 1960s. Although focusing primarily on the United States, the analysis also considers the impact of changing resource supplies on the trade structure of thirty-three other countries. In so doing, the analysis provides a basis for understanding the impact of relative resource changes on U.S. comparative advantage within the world economy.

The analysis first examines the changes that have occurred in the availability of resources (capital, labor of differing skills and land) across the thirty-four countries over the period from 1963 to 1975. Next, using traditional input-output methods, an analysis of the relationship between changes in resource structure and changes in the composition of trade as reflected in the changes in a country's implicit exchange of these factors' services is conducted. Finally, a formal statistical analysis of the resource determinants of U.S. comparative advantage is conducted at five points in time over the period from 1963 to 1975.

Overall, the analysis indicates that a consistent explanation for the decline in U.S. trade performance since the early 1960s is the result of changing world resource supplies. These changes are the result of differences in the rates of growth across countries of net real investment in equipment and the acquisition of labor skills through education and other training.

The data on resource supplies indicate that there have been substantial changes in resource structure across countries. In par-

ticular, it is found that the capital abundance position of the United States has been substantially eroded since the early 1950s. In terms of the growth in capital per worker, the United States outpaced only two countries: Ghana and Yugoslavia, both of which showed a decline. In comparison, Japan's capital per worker grew at an average annual rate of 10.1 percent, second only to Korea whose relative capital endowment grew at the surprisingly rapid rate of 11.9 percent per year. Other countries showing relatively rapid rates of growth in capital per worker include Greece, Spain, Hong Kong, Brazil and Mexico. As a result of this differential growth, the United States fell from first to sixth on the basis of the ranking of capital available per worker. This relative decline is also found, to a lesser degree, with respect to the U.S. availability of skilled labor.

When resource structure was assessed on the basis of a country's world share of each resource, similar declines for the United States were found. In particular, the U.S. share of world capital fell from 44 percent in 1963 to 33 percent in 1975. By comparison, Japan's share of world capital increased twofold over the same period, from 7 to almost 15 percent. The U.S. world share of skilled labor fell from 29 percent to 26 percent, its world share of arable land, however, increased from 27 to 29 percent.

Examining the changes in the composition of a country's trade and its exchange of factor services, the results indicate that changes in the availability of resources in the United States relative to the rest of the world have had a major impact on the structure of U.S. trade. In particular, the structure of U.S. trade since the late 1960s has been significantly influenced in the capital-intensive sectors and the composition of U.S. trade has shifted such that its relative exchange of capital services with the rest of the world has declined. This finding is consistent with the decline in the capital abundance position of the United States relative to the rest of the world.

When U.S. exports going to developed and developing countries are examined, the results suggest that the accumulation of skilled labor and capital in the developed countries has contributed to a decline in the absorption of these factors from the United States and that, therefore, these countries have expanded their ability to compete in those sectors representing major U.S. manufacturers' exports. The results also suggest that the accumulation of capital in the less developed countries has reduced their absorption of capital services from the United States but that they continue to absorb increasing amounts of skilled labor.

The formal statistical analysis of the resource determinants of U.S. comparative advantage indicates that the changes in the resource availability of the United States relative to other countries provide a significant explanation of the changes in U.S. trade structure and the increasing competition to the United States in world markets. It is found that skilled labor and capital remain important determinants of the commodities in which the United States has a comparative advantage. But given this, what matters for changes in trade performance in such products among countries is the rate at which these resources are accumulated.

In this regard, the findings indicate that the relatively more rapid growth of physical capital, and to a lesser degree, skilled labor by the developed countries has enabled them to become increasingly competitive in those commodities representing U.S. comparative advantage. The results further indicate that the increasing accumulation of physical capital and semiskilled labor by the developing countries has enhanced their ability to compete in those commodities representing U.S. comparative disadvantage. Therefore, the results suggest that both U.S. export and import-competing industries will face increasing competition in the 1980s. The likely consequence of this increased competition in world markets will be to narrow the range of products representing U.S. comparative advantage.

TRENDS IN TECHNOLOGY-INTENSIVE TRADE: WITH SPECIAL REFERENCE TO U.S. COMPETITIVENESS

(By C. Michael Aho and Howard F. Rosen)

EXECUTIVE SUMMARY

Recently there has been a decline in U.S. research effort both relative to its trading partners and relative to past efforts. Consequently, the question arises whether the United States will lose its competitive advantage in those technology-intensive commodities which have traditionally characterized its comparative advantage.

This paper examines recent trends in the pattern of trade in technology-intensive products to see whether there has been an erosion of the U.S. competitive position in these products. The analysis is basically descriptive and uses a variety of measures to compare U.S. trade performance in technology-intensive commodities with that of other major industrial countries for the period from 1962–1977.

The analysis employs and compares all of the methodologies and indicators normally used to examine competitiveness and comparative advantage. These include: largest export earners, net exports, export-import ratios, "revealed" comparative advantage indices and exports and imports relative to domestic production and consumption. The analysis also examines U.S. export performance relative to major competitors in important commodities in third markets where all producers face the same market conditions.

The analysis shows that, in recent years, there has been a noticeable shift in the pattern of trade in high-technology products. The United States still maintains a strong competitive (and comparative) advantage in technology-intensive products, but U.S. competitiveness in those products in world markets has been deteriorating. The primary source of increase competition is Japan.

Several indicators revealed that high-technology products have been the source of strength in the overall U.S. manufacturing trade balance. Technology-intensive products comprise an increasing proportion of U.S. exports. Every year since 1962, the United States has had a trade surplus in technology-intensive products.

Relative to its major competitors, the United States still has (1) a greater concentration of high technology exports; (2) one of the largest export market shares in high technology products; (3) the greatest technological content in its exports; and (4) more technology-intensive products among the products which comprise its comparative advantage. However, there are several indications that the U.S. dominance in trade of high-technology products is beginning to erode.

The U.S. export market share in these commodities has fallen over time. In 1977, the U.S. share fell to second behind Germany, whose share had remained roughly constant over the fifteen-year period. During that period Japan's share quadrupled to a point where it was just behind the United States and Germany. The decline in the U.S. share and the improved performance by Japan and Germany were present throughout the entire period even after the exchange rate realignments began in 1971.

Another indication of a decline in U.S. competitiveness is the sustained increase in the import penetration ratio in high technology products. For many of the products the increases in their import penetration ratio was more rapid than for manufacturing as a whole. On a net export basis, several of the technology-intensive products had such a rapid growth of imports relative to exports that the United States became a net importer of those products. Finally, the United States is losing out to competitors in some of its traditionally strong products in third market areas.

Japan exhibits the most dramatic change in trade performance in technology-intensive commodities. Between 1962 and 1977, there was a remarkable shift in the structure of Japanese exports towards the higher technology industries. The share of these products in total exports more than doubled over the 1962–1977 period. Japan now has the largest trade surplus in technology-intensive products. In the 1960s Japan's trade performance in high technology products ranked low among the OECD countries. Since then, Japan has risen to second, behind only the United States as an exporter of technology-intensive products. The amount of technology embodied in Japan's exports has more than doubled between 1962 and 1977. Finally, Japan has begun to compete very favorably with the United States and other major countries in third market areas, where all competitors face the same market conditions.

The fact that U.S. exports remain more technology-intensive than exports from other major industrialized countries indicates that the United States has not lost its comparative advantage in technology-intensive goods. But the rapid growth of Japanese exports of technology-intensive goods and the growing share of Japan's exports to markets that were traditionally dominated by U.S. producers, demonstrate that Japanese competitiveness in technology-intensive goods is increasing. If these trends continue, competition between the two countries will increase in the future as both countries specialize on exporting similar products.

Research and development is one of the factors which affects the long-run competitive position of a country. To the extent the United States devotes less resources to research and development than its major competitors, then the long run international competitiveness of U.S. industry will be reduced. Increased R&D by firms in other countries will enable them to develop newer products and processes with which U.S. firms will have to compete. Although depreciation of the dollar will make U.S. products look more attractive in world markets, this will reduce real income at home. Not doing enough to lower costs and develop newer, higher quality products could lead to a long-run structural decline in the U.S. competitive position. To prevent such a decline the United States may need to put more resources into research activity.

ASSESSING THE CHANGING STRUCTURE OF U.S. TRADE IN MANUFACTURED GOODS: AN ANALYSIS AND COMPARISON OF VARIOUS INDICATORS OF COMPARATIVE ADVANTAGE AND COMPETITIVENESS

(By Michael Aho, Harry P. Bowen, and Joseph Pelzman)

EXECUTIVE SUMMARY

This paper examines the growing importance of international trade to the U.S. economy and attempts to determine those commodities in which the United States has increased, maintained or lost a comparative and competitive advantage. The analysis focuses on the changes in the trade structure of the United States over the period from 1962 to 1977. The analysis is conducted at a highly disaggratated level using 102 manu-

facturing categories as defined at the 3-digit level of the Standard International Trade Classification (SITC).

A major contribution of this paper is that the analysis of U.S. trade structure and trade performance is based on an extensive list of indicators normally used to measure a country's performance in world markets. These indicators are first used to examine the changes that have occurred in the structure of U.S. comparative advantage and that of its major competitors. Cross-tabulations of the indicators at specific points in time as well as their change over time are then used to examine the relationships between the indicators and to determine a consistent list of commodities (based on all the measures) in which the U.S. has maintained or lost a comparative and/or competitive advantage.

Having established that international trade is playing an increasing role in U.S. economic activity, a determination of the specific commodities accounting for this growing interpendence was then made. This was accomplished using two measures, the ratio of exports to domestic shipments and the ratio of imports to apparent consumption.

Among the commodities with a high ratio of exports to domestics shipments and which therefore play an important role in the U.S. export sector are: machinery and appliances—other than electric, aircraft, power generating machinery—other than electric, and chemicals.

The commodities demonstrating a high import to apparent consumption ratio include musical instruments, pottery, textile and leather machinery, iron and steel tubes, silver and footwear.

A number of different measures were then used to determine the structure of U.S. comparative advantage and U.S. trade performance. These measures were:

Indexes of Revealed Comparative Advantage.—Two indexes were used. One is defined as a country's world market share of a particular commodity divided by the country's share of total world manufacturing exports. The second index is the ratio or a country's exports to imports of a particular commodity divided by the ratio of its total manufacturing exports relative to its total manufacturing imports.

Net Exports (divided by domestic shipments).

Import Penetration Ratio (divided by the overall manufacturing import penetration ratio).

Constant Market Share Residual.—At a commodity specific level, the CMS procedure identifies two component effects contributing to export growth. One is due to the increase in world trade of the commodity and the other is due to the regional or market distribution of the country's exports of the commodity. Once these two effects have been determined the residual effect is measured as the difference between the actual increase in exports and that which would have occurred had the country maintained its market share of the commodity in each regional market. When this residual effect is negative it is interpreted as a decline in competitiveness. Conversely, when the residual effect is positive it is taken to mean that the country has increased its competitiveness.

Based on the changes in the two indexes of revealed comparative advantage between 1962 and 1977, changes in U.S. trade performance across the 102 manufacturing commodities were examined. The results of this analysis indicated that:

Five commodities showed improved performance based on both indexes of revealed comparative advantage. These were: other inorganic chemicals, manufactured fertilizers, cotton fabrics-woven, glass and miscellaneous nonferrous base metals.

Three commodities revealed a disadvantage on both indexes. These were: articles of rubber, n.e.s. (representing mostly rubber tires), telecommunications apparatus and miscellaneous manufacturers.

Fourteen commodities maintained an advantage on the basis of both indexes. These included: explosives, tools for use in the hand or in machines, electric power machinery, and electrical medical apparatus.

Twelve commodities maintained an advantage on the basis of one index and revealed a disadvantage on the other. Notable among these twelve are: inorganic chemicals, road motor vehicles, medical and pharmaceutical products, plastics and metalworking machinery.

The above results were based only on changes in the indexes between two years, 1962 and 1977. As an indication of overall changes, the trend changes in three of the more important indicators (net exports, revealed comparative advantage and import penetration) were computed based on annual data and lists of the commodities showing either consistent positive or consistent negative performance across those indicators were compiled. These are presented below.

Commodities showing consistent positive performance were:

Organic chemicals.
Other inorganic chemicals.
Essential oils, perfume and flavour material.
Fertilizers, manufactured.
Explosives and pyrotechnic products.
Leather.
Veneers, plywood boards.
Paper and paperboard.
Textile fabrics, woven other than cotton.
Tulle, lace, embroidery.
Special textile fabrics and related products.
Floor coverings, tapestries, etc.
Glass.
Rails and railway track of iron or steel.
Nickel.
Lead.
Tin.
Miscellaneous nonferrous base metals.
Machines for special industries.
Equipment for distributing electricity.
Scientific measuring and controlling instruments.
Photographic supplies.

Commodities showing consistent negative performance were:

Inorganic chemicals.
Manufactures of leather.
Articles of rubber, nes.
Pig iron.
Universals, plates and sheets of iron or steel.
Zinc.
Wire products (excluding electric).
Nails, screws, nuts and bolts.
Manufactures of metals, nes.
Telecommunications apparatus.
Domestic electrical equipment.
Road motor vehicles.
Furniture.
Clothing (except fur clothing):
Fur clothing.
Footwear.

Overall, the cross-tabulations indicated that the measures most often agreed as to the commodities with declining international performance. When net exports was used as the base indicator of trade performance, the indicators showing most agreement as to changes in trade performance were first the two indexes of revealed comparative advantage and then the constant market share residual.

Lastly, the results indicate that the United States has improved its performance in many of its key export products including scientific instruments and certain chemical products. But the United States has also suffered an erosion in its international performance in the key export earning sectors of telecommunications apparatus and road motor vehicles. These changes reflect changes in the composition of U.S. trade in response to changes in world trade and international competition. Continuing adjustments are likely to occur as resources are reallocated toward those sectors showing improved performance.

A Constant Market Share Analysis of U.S. Export Growth

(By Harry P. Bowen and Joseph Pelzman)

Executive Summary

This paper examines the movements of U.S. world market export shares between 1962 and 1977. It also evaluates the performance of U.S. exports in particular subperiods over the 1962–1977 period using the Constant Market Share (CMS) model. The particular subperiods analyzed are 1962–1969, 1970–1973 and 1974–1977. The entire analysis was performed for 102 manufacturing commodities defined at the 3-digit SITC level. In the main body of the paper an indepth analysis of the performance of the top eighteen U.S. manufacturing export earners over the entire 1962–1977 period is conducted as is a CMS analysis of the growth of total U.S. manufacturing exports.

An appendix provides a comprehensive and concise summary of U.S. export performance for each of the 102 commodities. For each 3-digit group, a brief written summary is given indicating the changes in U.S. relative export performance, a brief list of the major competitors in each commodity, and a summary of the CMS results. Further information on U.S. trade performance is provided in the form of a graph indicating the movement in both the U.S. world share of exports and U.S. net exports over the 1962–1977 period.

Although trade is becoming increasingly important to the U.S. economy, the United States is playing a relatively smaller role in the world economy. An analysis of U.S. export market shares for 102 manufactured commodities indicated that the United States had trend declines in 71 percent of the commodities compared to 25 percent for Japan and 24 percent for West Germany. Most of the U.S. declines occurred in the 1960s with the 1970s representing mostly a period of stabilization.

Among the top five U.S. manufacturing export earners (road motor vehicles, nonelectrical machinery, aircraft, other electrical machinery, and office machines (computers)), only aircraft had an increase in its export market share.

The Constant Market Share model facilitates the analysis of this export performance by enabling one to attribute U.S. export growth to four specific sources:

The growth of world trade.

The commodity composition of U.S. exports.

The market distribution of U.S. exports.

A residual representing the difference between the actual increase in a country's exports and the increase that would have occurred had the country maintained a constant share in each market and in each commodity.

This model allows one to address the following questions: (1) What would U.S. exports have been if they had expanded at the same rate as world trade? (2) What is the influence of the commodity composition of U.S. exports on its export performance? (3) What is the effect of the relative growth in demand for U.S. exports in key country or regional markets? (4) What portion of U.S. export growth is unexplained by these factors? The changes in this last component are

usually attributed to changes in competitiveness.

The CMS results for total U.S. exports indicated the following:

Over the entire 1962–1977 period the United States experienced a decline in its competitiveness as reflected by the CMS residual with most of this decline occurring in the 1962–1969 period.

During the 1962–1969 subperiod the United States export performance was enhanced by the relatively faster growth in key markets but this was not sufficient to offset major declines in competitiveness.

During the 1974–77 subperiod a positive source of U.S. export growth was the favorable commodity composition of its exports.

The decline in the competitiveness component of the CMS equation may not necessarily imply a general loss in U.S. competitiveness for two reasons:

A comparison of the various countries' export unit values over the 1962–1977 period demonstrated that during the 1970–1977 period the growth in U.S. export unit values was far smaller than its major competitors with the exception of Japan during 1974–1977.

A comparison of growth rates of gross domestic product (GDP) indicated that in each of the three subperiods the growth of U.S. GDP was less than that of its major competitors.

Therefore, it is possible that the decline in U.S. competitiveness as captured by the CMS analysis may, in part, be attributed to differences in GDP growth rates and differential increases in export unit values among major trading partners not reflective of actual changes in competitiveness.

To substantiate the conclusions based on the analysis of total U.S. exports, and to determine if major shifts across commodities had occurred during the 1962–1977 period, the CMS analysis was performed separately for each of the 102 manufacturing commodities. The results of this analysis indicated that:

In most cases the decline in U.S. export shares in the 1960's and early 1970's was due to residual competitiveness factors.

The growth of U.S. exports in the 1974–1977 period was retarded by both the slower growth in key U.S. export markets as well as competitiveness factors.

Whereas the 1960s represented primarily a period of decline in U.S. competitiveness, the latter part of the 1970's appears to have been a period of realignment in response to major changes in international trade.

Under ideal circumstances, the CMS analysis would allow for separate identification of each of the above effects. In practice, however, this procedure is subject to a number of biases on both conceptual and empirical grounds. Therefore, to determine the extent to which the CMS results generated were susceptible to identifiable biases, three sensitivity tests were conducted. In particular, variations in the overall CMS estimates were examined as a result of changes in:

The choice of base year,

The level of aggregation of commodities,

The definition of the world market.

The results of the various sensitivity tests indicate that:

The CMS component estimates were not severely affected by the commodity aggregation but did appear highly sensitive to both changes in the base year chosen and to variations in the definition of the world market.

Its high sensitivity to base year changes supported the conclusion that major structural changes have occurred in the U.S. export sector.

U.S. TRADE PERFORMANCE: THE ROLE OF CHANGES IN RESOURCE ENDOWMENTS AND CHANGES IN TECHNOLOGY

(By C. Michael Aho and Harry P. Bowen)

There is no doubt that the United States has declined as a dominant force in world trade. The U.S. share of manufactures exports has declined from over 25 percent in the early 1960s to 15.5 percent in 1979. This note discusses reasons for the decline in the level of the U.S. share and also some of the relative changes that have occurred.[1] It also explains some of the reasons for the increased international competition facing U.S. industries.

A principal reason for the reduced dominance of the United States in world trade is the more rapid accumulation of capital and skilled labor abroad. Between 1963 and 1975, the capital available per worker in the United States increased by 1.7 percent per year whereas the percentage of highly-skilled labor in the work force increased by 1.3 percent per year.

In contrast, capital per worker in Japan increased by 10.1 percent per year while the percentage of skilled workers in Japan's labor force increased by 3.4 percent per year. In fact, the growth in U.S. capital per worker was the lowest among the developed countries as well as many of the developing countries. This was also true, for the most part, of the growth in the percentage of skilled workers in the U.S. labor force.

The relatively slower growth of the U.S. capital stock could reflect both the slower real growth of U.S. GNP and the fact that the United States allocates a smaller proportion of its GNP to investment. In 1978, the United States allocated only 7.3 percent of its GNP to gross fixed capital formation in machinery and equipment, whereas Japan allocated 10.9 percent, Germany 8.9 percent, France 9.1 percent, and the United Kingdom 9.2 percent. In terms of total gross fixed capital formation, the United States allocated 18.1 percent, Japan 30.2 percent, Germany 21.5 percent, France 21.5 percent and the United Kingdom 18.1 percent.

The relatively slower growth in capital and skilled labor in the United States, along with the growth of these resources in other countries, has resulted in a reallocation of capital and skilled labor around the world. Table 1 provides an indication of the reallocation of capital and skilled labor by showing the U.S. world share of capital and professional/technical workers in 1963 and 1975. The world resource shares of selected countries are also shown. In 1963, the percentage of the world's capital located in the United States was 42 percent. By 1975, the U.S. share of the world's capital had fallen to 33 percent. Japan's share of capital more than doubled, from 7 to 15 percent. Note that the United States' share of skilled labor also declined between 1963 and 1975.[2]

TABLE 1.—WORLD SHARE OF CAPITAL AND SKILLED LABOR

	Capital		Skilled labor	
	1963	1975	1963	1975
United States	41.93	33.43	29.36	26.23
Japan	7.09	14.74	7.84	8.62
Germany	9.12	8.27	7.08	6.56
United Kingdom	5.60	4.89	6.97	6.44
France	7.14	7.94	6.57	6.24
Mexico	1.07	1.59	1.64	2.12
Korea	.13	.40	.57	1.64
Brazil	1.63	2.38	2.88	3.72
Hong Kong	.06	.12	.21	.19

A more direct picture of the changes in resource availability between the United States and other countries can be obtained by examining the availability of capital and skilled labor resources on a bilateral basis. Table 2 contains bilateral comparisons between the United States and selected countries. These data indicate, for example, that in 1963 the United States had six times the amount of capital compared to Japan and almost four times the amount of skilled labor. But by 1975, the United States had only two times Japan's capital and just over three times the amount of skilled labor. Clearly, the most dramatic change among those shown is that between the United States and Korea where the disparity in capital availability was substantially reduced.

TABLE 2.—RELATIVE CHANGES IN CAPITAL AND SKILLED LABOR

[Ratio of U.S. share to other country's share]

	1963	1975
Capital:		
United States/Japan	5.91	2.27
United States/Germany	4.60	4.04
United States/United Kingdom	7.49	6.84
United States/Mexico	39.19	21.03
United States/Korea	332.54	83.57
United States/Hong Kong	624.13	278.58
Skilled labor:		
United States/Japan	3.74	3.05
United States/Germany	4.15	4.01
United States/United Kingdom	4.21	4.06
United States/Mexico	17.90	12.42
United States/Korea	51.51	35.11
United States/Hong Kong	139.81	138.58

[1] Often the concepts of comparative advantage and competitiveness are confused. Depreciation of the dollar will enhance the competitiveness of all U.S. industries relative to foreign competitors. Comparative advantage refers to the structure of trade relative to trading partners. A nation will always have a comparative advantage in something.

If the United States were to experience a trade deficit, say because of a loss of an export market overseas (net capital flows held constant at zero to simplify the discussion), the dollar would depreciate, thereby enhancing U.S. industrial competitiveness. The important questions are how the U.S. trade balance would be brought back into balance and which sectors would be involved. The dollar depreciation will increase the volume of exports and decrease the volume of imports, and assuming stability conditions hold, will bring the value of exports and imports back into balance. Which sectors respond is determined by underlying comparative cost considerations and will depend upon the structure of resource endowments and technology and how they change over time in different countries. Nonetheless, some sectors will respond and on the export side, they will be the sectors that are more competitive internationally. From a policy perspective however, it is important that industries and agriculture continually try to enhance their competitiveness (through investment, research, etc.) because depreciation of the dollar will lead to a deterioration in the terms of trade. Thus, depreciation of the dollar can always increase the competitiveness of U.S. industries, but only at the cost of a real income loss for domestic consumers as the real cost of imports in terms of exports rises.

[2] However, the U.S. world share of arable land increased between 1963 and 1975 from 27 percent to almost 30 percent. Thus, the United States is becoming increasingly abundant in land relative to capital and skilled labor, and it would be expected that this would enhance the international competitiveness of the agricultural sector relative to manufacturing.

These changes in the resource position of the United States both with respect to the world and individual countries have had their impact on the composition of U.S. trade. One method for assessing this impact is to examine the changes in the implicit exchange of capital and skilled labor services that are contained, or embodied, in U.S. trade as a result of changes in the composition of trade. Figure 1 shows the ratio of capital services to total labor services embodied in U.S. manufactured exports to the developed and developing countries. Figure 2 shows the ratio of skilled labor to total labor services embodied in U.S. manufactured exports to these two country groups.

(Figures mentioned in the text not printed in RECORD.)

These figures indicate that, over time, the composition of U.S. manufactures trade has shifted toward these commodities which employ less capital per worker in production and thus that both the developed and developing countries have absorbed less capital per worker from the United States. These charges are consistent with higher rates of capital accumulation abroad than in the United States. Further, since the early 1970s, the composition of U.S. manufactures trade to the developed countries has shifted toward those sectors employing less skilled labor indicating a reduced absorption of skilled labor by the developed countries from the United States. However, since the early 1960s, the composition of U.S. manufactures trade to the developing countries has shifted continuously toward the more skill-intensive commodities and thus the developing countries are absorbing more skilled labor services.

These comparisons suggest that the changes in the structure of factor abundance of the United States relative to the rest of the world have had a significant impact on the structure of its trade. More detailed statistical analysis confirmed these results.[3] In particular, the relatively more rapid growth of physical capital, and to a lesser degree skilled labor (human capital), by the developed countries has enabled them to become increasingly competitive in those commodities in which the United States has traditionally had a comparative advantage. The results also indicated that the increasing accumulation of physical capital and semi-skilled labor by the developing countries has enhanced their ability to compete in many manufacturing commodities. This suggests, therefore, that both export and import-competing industries in the United States will face increasing competition in the 1980s if the U.S. share of world resources continues to decline.

The decline in U.S. research and development effort both relative to the effort in other countries and relative to our own past effort could also be partially responsible for the increased competition being experienced by U.S. industry and for the changes in the structure of U.S. trade. Tables 3 and 4 compare research and development expenditures as a percentage of GNP and the number of scientists and engineers per 10,000 workers for the major countries.[4]

Technology-intensive products have traditionally been the source of strength in the U.S. trade balance.[5] All of the empirical evidence indicates that in the past the United States has had a unique advantage in the trade of high technology products. However, that unique advantage is slowly disappearing in part because of the increased research and development effort overseas.

Figure 3 compares the technological content of U.S. manufacturing exports and imports over time and confirms that the United States has been and remains a net exporter of products which utilize relatively more technological input (research and development). Figure 4 compares the technological content of U.S. manufacturing exports to developed and developing countries over time. Since 1971, there has been a significant decline in the technological content of U.S. manufacturing exports to the developed countries. The technological content of U.S. manufacturing exports to the developing countries continues to increase, but only slightly. These findings are similar to the results for skilled labor, but are not surprising because the industries which intensively use skilled labor tend also to be technology-intensive.

TABLE 3.—R. & D. EXPENDITURES AS A PERCENTAGE OF GROSS NATIONAL PRODUCT, 1964–77

Country	1974	1968	1972	1975	1977
France	1.81	2.08	1.86	1.82	1.79
Germany	1.57	1.97	2.33	2.39	2.26
Japan	1.48	1.61	1.85	1.94	[1] 1.94
United Kingdom	2.30	2.29	2.06	2.05	NA
United States	2.97	2.83	2.43	2.30	2.27

[1] 1978.

Source: National Science Board, Science Indicators 1978, Washington, D.C., 1979, table 1–1.

TABLE 4.—SCIENTISTS AND ENGINEERS PER 10,000 IN THE LABOR FORCE, 1965–77

Country	1965	1968	1972	1975	1977
France	21.0	26.4	28.1	29.3	[1] 29.9
Germany	22.6	25.9	35.7	39.4	40.5
Japan	24.6	31.1	38.1	47.9	49.9
United Kingdom	21.4	17.2	27.8	30.6	NA
United States	64.1	66.9	58.3	56.4	57.4

[1] 1976.

Source: National Science Board, Science Indicators 1978, Washington, D.C., 1979, table 1–3.

Finally, Figure 5 and Table 5 compare the technological content of manufacturing exports of the major OECD countries for the period from 1962 to 1977. The technology-intensity of U.S. exports has remained almost constant over time showing only a slight decline after 1971.

TABLE 5.—TECHNOLOGY CONTENT OF OECD MANUFACTURED GOODS EXPORTS

	1962	1966	1970	1974	1977
United States	3.3	3.1	3.7	3.6	3.5
France	2.0	2.2	2.2	2.1	2.3
Germany	2.1	2.2	2.3	2.2	2.3
Japan	1.8	2.1	2.5	2.4	2.8
United Kingdom	2.3	2.6	2.5	2.6	2.7
OECD	2.3	2.3	2.5	2.4	2.5

Although there has been little change in the level of technological content of European manufactures exports, there has been a significant increase in the technological content of Japanese manufactures exports. By 1977, Japan ranked second behind the United States in terms of the technological content of its exports. This confirms the widespread impression that the United States is experiencing increased competition from Japan in the more technically sophisticated industries. A comparison of export market shares in third market areas reinforces this conclusion.

Changes in relative competitiveness in high-technology products can best be measured by examining exports of the major countries to a third market region where everyone faces the same market conditions. Such a comparison reveals that the United States has been losing ground, particularly to Japan. For example, in 1962 the U.S. share of exports of high-technology products to developing countries was 46 percent. By 1970 the U.S. share had dropped to 31 percent and it fell further to 25 percent in 1977. In contrast, Japan's share rose from 6 percent in 1962 to 13 percent in 1970 and to 22 percent in 1977. Thus, although the United States maintains the lead in exports of high-technology products, its competitive advantage is being eroded at least with respect to Japan.

In conclusion, the changing distribution of world resources, and thus their availability among countries, along with the increased technical effort by our major competitors are jointly responsible for the relative decline in the dominance of the United States in world trade. Because the United States emerged from World War II with its industrial base intact, it had a unique position in the world economy. That unique position has now largely disappeared, and the United States must now concentrate on keeping its industrial and agricultural base competitive because, if past trends continue, U.S. industries are likely to face increased international competition in the future.

BIBLIOGRAPHY

Aho, C. Michael and Howard P. Rosen (1980). "Trends in Technology-Intensive Trade: With Special Reference to U.S. Competitiveness." Office of Foreign Economic Research, Department of Labor, June.

Bowen, Harry P. (1980). "Changes in the International Pattern of Factor Abundance and the Composition of Trade: A Multi-Country Analysis of Changing Comparative Advantage in Manufactured Goods with Special Reference to the United States." Office of Foreign Economic Research, Department of Labor, June.

National Science Foundation (1980). *Science Indicators.*

U.S. Department of Commerce (1980). *International Economic Indicators,* June.

Mr. STEVENSON. Mr. President, much has also been said about the issue of controlling interests by banks in trading companies, and the position of the Federal Reserve Board on that issue.

The most comprehensive statement of which I am aware on that issue is by the Comptroller of the United States. He discusses at some length the importance of bank participation through controlling interests in trading companies, and concludes that not only will the trading companies be served but also the banks.

Therefore, I also ask unanimous consent that a statement by the Comptroller before the Committee on Banking, Housing, and Urban Affairs be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF JOHN G. HEIMANN

This is in response to the Committee's request for the views of the Office of the Comptroller of the Currency on the "Export Trading Company Act of 1980" (S. 2718). We welcome the opportunity to comment on this legislative proposal. Our comments are limited to those provisions which permit bank participation in new export trading ventures.

S. 2718 is designed to promote the expansion of U.S. exports through the formation and operation of export trading companies ("ETCs") to facilitate the export of goods and services on behalf of small- and medium-sized firms. The bill provides for a significant role for U.S. banking organizations as an important component of the promotion of

[3] After identifying the commodities which constitute the U.S. export and import bundles, the analysis was carried out for a cross section of thirty four countries at five different points in time. See Bowen (1980) for details.

[4] See National Science Foundation (1980) for a more complete discussion.

[5] Aho and Rosen (1980) identify seventeen 3-digit commodities as technology intensive and compare recent U.S. trade performance in these commodities with overall U.S. manufacturing trade, with past U.S. performance and with the performance of major competitors.

exports by permitting their investment in and ownership of ETCs.

This Office supports the concept of export trading companies and urges the enactment of this legislation. Our national interests require the strengthening of U.S. competitiveness in world markets. The proposed ETCs appear to be a viable means to further that national objective. Various testimony on S. 2718 and similar bills has strongly advocated bank participation as an essential element to successful trading company operations. ETCs require the capital, financing, financially-related services, and marketing capacities which U.S. banking organizations can provide through their national and international networks to small- and medium-sized firms across the U.S. We believe that it is necessary for a significant role to be taken by banks to assure the success of ETC operations.

While the degree of future bank participation in ETCs, and the forms that such participation may take, remain unclear at the early conceptual stage of developing a U.S. model for trading companies, we do anticipate a wide range of bank lending to and investment in ETCs. This would reflect the diversity of probable bank participants as well as the diversity of the local and regional businesses which ETCs would serve. Permitting banks to have equity interests in ETCs would be a long-term incentive for them to establish the additional organizational framework necessary for them to provide a complete range of services to effectively promote exports of goods and services. A bank prudentially may require a controlling interest in an ETC in which it becomes an active participant. For these reasons we do not want to foreclose a bank's ability to acquire such an interest. Accordingly, we support ownership of ETCs by banking organizations if the reasonable supervisory safeguards in S. 2718 are enacted.

Equity participation by banks in ETCs would to a limited extent breach the traditional policy of separating banking and commerce. However, we believe that S. 2718 addresses the national interest of export promotion in a way which preserves the safety and soundness of the banking system. The Congress has previously permitted limited bank participation in commercial activities over the past 60 years to accommodate particular national needs—our current trade imbalances require similar legislative action.

A healthy and expanding export sector has become increasingly essential to a strong U.S. economy, the stability of our external accounts, and our critical fight against inflation. Exports contribute significantly to U.S. employment, production and growth; enable economies of scale which contribute to the efficient use of resources and reduced prices; and provide a constructive method for the payment for U.S. imports of essential and desired commodities. U.S. industries must be able to compete abroad if they are to maintain their ability to compete at home.

The Commerce Department reports that only 10 percent of the 250,000 U.S. manufacturing firms export their products and that total U.S. exports account for the lowest percentage of gross national product of any industrialized nation. Also, 95 percent of U.S. manufacturing firms are small- or medium-sized companies which employ less than a thousand persons. These companies represent a small share of exports, about 10–15 percent of total U.S. exports. Conversely, most U.S. exports are the sales of a small number of U.S. firms. Approximately 100 U.S. firms account for 50 percent of the total exports of U.S. manufacturers. The purpose of this bill is to strengthen the international competitiveness of the U.S. by providing small- and medium-sized U.S. firms increased opportunities to export. At present, these firms face a number of structural obstacles and disincentives to exporting which are difficult for the independent firm to overcome.

FLEXIBLE ETC SERVICES

At the present time, small- and medium-sized U.S. firms have four primary methods available by which they may export goods and services. They may: sell directly to foreign end-users; sell through foreign agents or brokers; sell through U.S. export management companies; or, find a large U.S. multinational firm that needs certain products for specific overseas activities. These methods apparently have not provided U.S. firms with adequate opportunities to export their goods and services. These methods entail problems for small- or medium-sized firms which act as disincentives to exporting. Such practical barriers include:

Selling directly overseas ties up the current cash flow of U.S. firms because of slower payment time than in the domestic market.

Foreign export agents or brokers often demand total product control and extremely flexible pricing.

The majority of export management companies lack the expertise to handle more than one or two specialized product lines. Most of these companies lack the management and capital necessary to expand geographically and to establish overseas sales offices.

Generally, large U.S. multinational firms do not directly involve smaller firms in foreign trade.

Besides these difficulties, small- and medium-sized U.S. firms lack other necessary capabilities and expertise such as specialized knowledge of markets to match specific product demands, funds for the development of a foreign market for their particular products, adequate working capital, and adequate financing for foreign purchasers of goods or services. These problems have substantially contributed to the lack of participation of many small- and medium-sized U.S. firms in export trade.

The export trading companies would be an alternative to the existing cumbersome export mechanisms and would encourage the involvement of small- and medium-sized U.S. firms in export trade. As demonstrated by the successful operation of export trading companies in other countries, an export trading company can develop and provide an integrated package of managerial and financial services to facilitate exports. Export trading companies, through volume transactions, also permit economies of scale to reduce the costs of exporting goods or services by U.S. firms.

Export trading companies abroad have proved to be effective. They act as more than intermediaries handling a broad spectrum of products. Export trading companies not only function as a bridge between suppliers and users of products but also provide many other services essential to successful exporting. For example, an export trading company may offer expertise in financing, credit services, market analysis, distribution channels, documentation, leasing, communications, accounting, foreign exchange and advertising. Essentially, an export trading company reduces the requirements for special expertise and capital investment of firms interested in exporting. U.S. businesses should not be deprived of the same advantages as those enjoyed by foreign competitors through their access to such foreign ETC exporting assistance.

THE ROLE FOR BANKS

U.S. banking organizations should play a significant role in the development of export trading companies. They can contribute significantly to U.S. export capabilities in several ways. First, banks have extensive national and international networks comprised of branches, subsidiaries, affiliates, representative offices and correspondent relationships. These networks not only can provide essential marketing and other services abroad but, more importantly, these networks extend throughout the U.S. touching virtually all small- and medium-sized firms. Second, U.S. banks can provide through that network a wide range of export-related financing as well as ancillary services, such as assistance and guidance in the identification of foreign markets, foreign exchange, trade documentation, transportation and warehousing. Third, banks can provide export trading companies and exporters the financing necessary for export transactions.

Major foreign banks which are involved in export trading companies provide a convenient single-source service for exporters abroad. U.S. banks, however, are not authorized under existing laws to offer the complete range of services essential to attracting small- and medium-sized U.S. firms into exporting their goods and services.

Traditionally, the export promotion efforts of U.S. banking organizations have been adjunct to overall commercial lending because their operations have been legally confined to those activities which are considered to be closely related to the business of banking. U.S. banking organizations have the systems, skills, and experience necessary to provide one-stop export services to U.S. firms but need broader authority to do so. S. 2718 would provide that authority by permitting participation in ETCs by banking organizations.

U.S. bank investment in ETCs would facilitate achievement of the underlying purposes of the proposed legislation. With equity participations in ETCs, banks could readily package essential one-stop exporting services which would greatly reduce the expertise and overhead expenses required of individual firms seeking to sell abroad.

There are other reasons why S. 2718 properly permits U.S. banks to invest in ETCs. First, the investment authorities contained in S. 2718 would increase the number of possible investors and available capital to form ETCs. Second, banks with their international offices, experience in trade financing, and familiarity with domestic U.S. producers, are likely sources of leadership in forming ETCs. They possess many of the skills important to ETC organization and management. Third, their investment in ETCs would provide banking organizations with an incentive to create the long-term organizational framework necessary to accommodate export promotion as a mainstream function. Finally, by permitting U.S. banking organizations to hold equity investments in ETCs, S. 2718 would rationalize the present system of authorities. U.S. banks are presently permitted to be involved in foreign ETCs which can buy and sell goods and services abroad. Foreign banks operating in the United States may also own a foreign ETC which can export goods to the United States.

We do not know, however, the degree and forms of participation that U.S. banks may develop with ETCs. We also cannot forecast whether banks would immediately begin to organize ETCs should this bill be enacted. We are only working with a conceptual model for ETCs at this time. However, we anticipate that, should the legislation be passed, U.S. banks over time would develop ETC relationships suited to the wide range of commercial transactions generated by their own local and regional economies. We are confident that U.S. multinational banks would seize any new opportunities in this area. Moreover, multinational and regional banks would also offer ETC facilities and participations to local banks and firms through joint ventures.

We support the provisions of S. 2718 which provide for U.S. banking organizations to own a controlling interest in ETCs. This Office generally prefers banks to have equity and management control over their affiliate relationships rather than have that capital exposed to decisions by majority non-bank partners. It also is reasonable to expect banks to be more inclined to form ETCs if the banks can control their investment and the ETC's activities. The unfavorable bank experience during the early 1970's with less than controlling participations in REITs, foreign banks and finance companies have led U.S. banks to adopt investment strategies which generally avoid non-controlling positions in affiliates.

We recognize that equity participation by U.S. banking organizations in ETCs would represent an exception to traditional policy which separates banking and commerce. However, we believe that the proposed legislation is consistent with previous exceptions Congress has made in order to further necessary national policies. Congress has permitted banks to own equity participations in Edge Act Corporations, international financial or holding companies, commercial corporations oriented towards national or community purposes, and bank service and other banking related entities. Similarly, we believe this bill addresses the national interest (of export promotion) in a way which preserves the safety and soundness of U.S. banking system.

SUPERVISORY SAFEGUARDS

The proposed legislation contains several necessary supervisory safeguards regarding U.S. bank involvement in ETCs. First, S. 2718 addresses entry and aggregate investment limitations: U.S. banks could not invest more than $10 million or acquire a controlling interest in an ETC without prior agency approval; a U.S. bank would not be permitted to invest more than 5 percent of its capital and surplus in the stock of one or more ETCs; the aggregate amount of loans and investments a U.S. bank could make in an ETC would be limited to 10 percent of the bank's capital funds; and, no group of banks could acquire more than 50 percent of an ETC without prior agency approval, even if no one bank were to acquire a controlling interest, and no bank were to invest $10 million or more.

Second, the legislation would also establish several other restrictions on banking organization investors and ETCs. For example, the name of an ETC could not be similar in any respect to that of a banking organization investor. If an ETC takes speculative positions in commodities, all banking organization investors would be required to terminate their ownership interests. A banking organization would be prohibited from making preferential loans to any ETC in which it has any interest, or to any customers of such an ETC. These limitations and restrictions have been structured to provide minimal financial exposure by banking organizations in ETCs and to prevent conflicts of interest.

Most importantly, S. 2718 provides substantial regulatory flexibility to the federal financial supervisory agencies to control investments by banking organizations in ETCs. If an agency determines that the anticipated export benefits of an investment are outweighed by adverse banking factors, the agency may disapprove an investment application submitted by a particular bank. Controlling investments in ETCs by banking organizations can otherwise be limited by (1) conditions imposed by the agencies to limit a banking organization's financial exposure or to prevent possible conflicts of interest or unsound banking practices; and (2) standards set by the agencies regarding the taking of title to goods and inventory by the ETC subsidiary, to ensure against unsafe or unsound practices that could adversely affect a controlling banking organization. The agencies may examine bank-controlled ETCs and may use their cease-and-desist authority to enforce any and all requirements of the law. The agencies may also require divestiture of any ETC investment that would constitute a serious risk to a banking organization investor.

These provisions adequately mitigate the supervisory concerns which we expressed regarding earlier proposals as to the safety and soundness of participating national banks. We do not feel, therefore, that additional statutory restrictions—such as a specific limit on the maximum interest a banking organization may have in an ETC, or a minimum capital ratio for bank-owned ETCs—need be enacted. As you know, Edge Act Corporations (EACs) must now operate within a leveraging regulation which requires paid-in capital and surplus to equal at least seven percent of an EAC's consolidated risk assets. The administrative authority granted to the federal agencies by S. 2718, in our opinion, will allow similar requirements to be imposed upon bank-owned ETCs through implementing regulations, with appropriate variations to take account of different types of permissible ETC activities. We believe that such regulatory authority to fashion particular limitations is preferable to a specific statutory provision.

While we support this legislation, we recommend that certain amendments be adopted. First, the definition of "export trading company" should be clarified to limit non-exporting activities by ETCs to conduct which facilitates U.S. exports, such as activities necessarily involved in international barter arrangements. The bill, as presently drafted, defines an ETC as a company organized and operated "principally" to export U.S. goods and services, among other activities. This definition should be supplemented by a requirement that all activities of an ETC be "related to" international trade.

Second, the specific time limits for agency disposition of investment applications should be extended. S. 2718 requires agency action within 60 days of written notice from a banking organization of its intention to make additional investments or to have an ETC undertake certain activities. S. 2718 would require agency action within 90 days of notice from a banking organization of its intention to make an investment of $10 million or more or to acquire a controlling investment in an ETC. We suggest that these time limits be extended to 90 days in the former case, 120 days in the later. In either case, an agency's failure to disapprove or impose conditions on a proposed investment within the appropriate time limit would result in the investment being deemed approved. We believe that the additional 30 days will allow the appropriate agencies to give more extensive considerations to new investment or activity proposals. At a minimum, specific statutory authority should be provided for the agencies to extend the time period in appropriate cases.

We fully support the objectives of S. 2718—encouraging the efficient provision of export trade services to U.S. producers and suppliers. The restrictions on bank involvement should adequately protect depositors of banking organizations which choose to participate in the management of ETCs. The limited opening of this area of activity to banks will create a unique U.S. export trading company system to allow more U.S. producers to benefit from existing international marketing networks and trade financing expertise.

Mr. BAKER. Mr. President, 10 years from now, when we review our efforts to resurrect the American economy, the legislation we consider today, the Export Trading Companies Act, will be seen as a major step in eliminating the uneasy relationship between Government and the private sector.

America needs a vigorous export policy. Our balance-of-trade deficits, which have grown significantly over the past several years, would be even greater were it not for the strength of our agricultural and high technology exports.

We can do even better. S. 2718 will improve U.S. export performance by encouraging the creation of companies designed to enhance the export capabilities of thousands of small- and medium-sized American producers.

The major problem for potential American exporters has been the marginal cost of establishing export capabilities. This bill is designed to eliminate the many disincentives to exportation of goods and services by cutting through the regulatory obstacles to aggressive international trade competition.

This bill will not solve all our problems. For far too long, we have shackled American enterprise in rules and regulations which our foreign competitors are free to ignore. We have tried to impose on the international market the rules which govern our domestic markets, and the American economy has paid the price.

Senators on the Banking, Housing and Urban Affairs Committee have expressed some concern about commercial bank participation in export companies, and their concern is not without merit. But we all agree that we must take the risks in order to reverse the mounting trade deficits of the last few years.

The managers of this bill, Mr. STEVENSON and Mr. HEINZ are to be congratulated on their work. They have produced a bill which addresses the core problems facing American exporters.

Speaking for the Members on this side of the aisle, I would like to express my admiration for the senior Senator from Illinois who is retiring from the Senate at the end of this session. His efforts on the behalf of American enterprise and the American people deserve our greatest respect and appreciation.

Mr. THURMOND. Mr. President, I rise today to express my support of S. 2718, the Export Trading Company Act of 1980, of which I am pleased to be a cosponsor.

The purpose of this important legislation is to promote and facilitate the formation of export trading companies and associations. Under the provisions of this bill, the Economic Development Administration and the Small Business Administration are directed to give special consideration to loan and guarantee applications of export trading companies. The Export-Import Bank is directed to establish a program to provide loan guarantees to export trading companies. In addition, banks are allowed to invest in these companies; and in so doing provide the expertise so necessary

to the success of the export trading company.

Mr. President, this bill also establishes a mechanism whereby certain activities of export trading companies are exempt from application of antitrust laws. This exemption is granted through a preclearance procedure, and is vital if these companies are to be successful.

Mr. President, I cannot overemphasize the need and importance of increasing our exports. Every other industrialized nation has a higher rate of exports relative to GNP than does the United States. It is no wonder that we find ourselves with a devalued dollar and an unfavorable balance of payments. Furthermore, each additional billion dollars in exports creates between 40,000 to 50,000 new jobs—jobs that are desperately needed by the Nation's unemployed.

Mr. President, fewer than 10 percent of our domestic manufacturing firms are engaged in exporting. Most small and medium sized producers cannot afford the costs and risks involved in fully developing opportunities to market their products and services abroad. The establishment of export trading companies will do much to help these smaller companies overcome the present barriers prohibiting their entry into the export market.

Mr. President, I sincerely hope that my colleagues in the Senate will recognize the need and importance of this legislation and support its passage.

EXPORT TRADING COMPANIES: HELPING TO REALIZE AMERICA'S EXPORT POTENTIAL

Mr. BRADLEY. Mr. President, this Nation's economic performance during the past decade has made us all more aware of the primary role that international trade and investment now plays in determining levels of growth, employment, and income in the United States. Increasingly, global markets shape the structure of U.S. industry by creating new demand for the output of some sectors, reducing demand for others and sorting out the competitive position of firms within industries. Having our economy become more intertwined in this way with the economies of foreign nations presents us with attractive opportunities as well as with competitive challenges.

These opportunities and challenges alike require that we have a national trade strategy aimed at turning the United States into an effective trading Nation in the rapidly changing international economy. To be successful our trade strategy must promote:

First, strongly competitive industries;

Second, a capacity for economic adjustment based on the *fair* distribution of costs and benefits attending adjustment among the affected segments of American society;

Third, a clear sense of the economic directions that will enhance the competitive advantages of the United States, reinforced by supportive public policies and market behavior; and

Fourth, an improved integration of U.S. domestic and foreign economic policies founded on greater attention to maximizing the benefits of trade to the United States.

Recognizing the need for formulating a national trade strategy, the Finance Trade Subcommittee currently is holding hearings on changing world economic conditions and the prospects for a trade strategy. I have the honor to chair these hearings. The urgency of adopting an integrated approach to the international challenges and opportunities facing us today has been continually underscored during the sessions we have had so far.

Trade can have much the same positive effect on living standards as advances in technology or productivity—with the added benefit that trade does not incur additional investment costs. With trade based on comparative advantage, Americans exchange goods and services they produce at relatively less cost for what foreign producers make relatively more cheaply than Americans. As with productivity gains, with trade too, Americans get "more" than they otherwise would get for "less".

Competitive exports are the means by which Americans can get "more for less." Regrettably, indications are that the United States is not now exporting at its full potential. To the extent that we fall short of this potential, we short-change ourselves of the benefits of trade, essential benefits such as more jobs, increased technological progress and productivity, higher income and quality of life, anti-inflationary pressures, a stronger dollar and a larger pool of economic resources with which to realize U.S. national security interests abroad.

There are a variety of obstacles that are keeping the United States short of its export potential. Many obstacles stem from Government policies and practices, with sound, but nontrade purposes, which inadvertantly have an adverse impact on exporting. Other obstacles can be traced to a history of strong domestic markets in the United States, a history which means that U.S. producers have paid relatively little attention to foreign market opportunities.

This as inattentiveness is in sharp contrast to the OECD countries who are now our fierce competitors for international markets. For example, Japan, almost bereft of natural resources, realized very early in its economic development that in order to pay for its essential raw materials and food, it had to become a vigorous exporter of manufactured goods. Over the years, Japan's exporting tradition has evolved into a powerful trade strategy unrivaled in its efficiency and adaptability to changing world circumstances. But Japan is by no means the only industrialized country that places far greater emphasis on exporting to invigorate its economy than does the United States. France and Germany sell some 35 percent of their manufactured products abroad; the Benelux countries sell 60 percent of their manufactures abroad; the United States still exports less than 10 percent of its manufactured products.

With merchandise trade deficits that have hovered around $30 billion in recent years, we can no longer afford to neglect our export potential.

S. 2718, the Export Trading Companies Act introduced by Senator STEVENSON, takes an important step in assisting U.S. companies to narrow the gap between export potential and current performance. I am proud to be one of the early cosponsors of this legislation and gratified that my judgment is now confirmed beyond dispute by the good company of 51 of my distinguished colleagues.

Mr. President, as you know, the purpose of the bill is to promote exports by facilitating the formation of export trading companies or associations, and it is well designed to do this. Its key achievement is to permit export trading companies to integrate a range of export services, most importantly banking services into a single one-stop shop for firms wanting to export.

A second important achievement is to reduce obstacles posed by antitrust laws to the formation of export trading companies without undermining the legitimate purpose of these laws in deterring activity that restrains competition in domestic markets. An array of conditions and certification procedures established by the bill safeguard the integrity of the banking system and the public interest in strong competition in domestic markets.

The departments and agencies charged with administering banking and antitrust law are vested with important powers of certification and review and they will be expected to exercise these powers with vigilant concern for the larger public interest.

As a result of having reasonably balanced the Nation's interest in promoting exports and regulating markets in order to promote competition and equity, existing export trading companies will multiply and will be able to enhance considerably their effectiveness. American exports will be in a position to compete more vigorously with products of foreign enterprises, whose governments long ago adopted more consolidated approaches to trade.

The bill is particularly a boon to small businesses. Small businesses in America are now just beginning to appreciate what America's big businesses have known for some time: The world has become smaller, national markets are interdependent and opportunities for market growth beyond U.S. borders are even greater than growth opportunities within them. Today, exports account for nearly 10 percent of United States' GNP, but U.S. small business generates some 15 percent of export sales.

I know small business can do better given the right opportunities. S. 1718 offers this kind of right opportunity to small business. For it is small business which now lacks adequate access to information, specialized skills, economies of scale, international marketing and distribution systems, and most importantly, export financing. Big business, most of which is multinational, already has achieved these trade advantages, particularly the integration of export-related services, through its internal structure or through long-term contracts or business relationships. This bill helps overcome informational and organizational barriers to exporting for small business. It thereby opens the field to a class of business that I believe can take

on a dynamic role in improving America's trade performance.

Mr. President, we are now in a position to move quickly and make a forceful statement in support of American exports—and therefore American prosperity—by unanimously adopting this much-needed legislation. I truly hope adoption will be unanimous.

Mr. President, I know Senator STEVENSON has worked long and tirelessly on making the export trading companies bill a sound, responsible piece of legislation. He has tried to accommodate, consistent with the bill's objectives, the concerns of his colleagues and of executive branch agencies. The bill is a worthy compromise in the fullest sense. I commend Senator STEVENSON on his foresight in introducing the idea of export trading companies to the U.S. Senate, his creativity and judgment in working through the provisions of the bill, his flexibility in responding to the legitimate concerns of others, and his determination to stay the course until the necessary work is done. I am proud to be part of the effort under his distinguished leadership and I am sure his efforts will be rewarded with passage of this legislation today.

Mr. LEAHY. Mr. President, today the Senate has an opportunity to approve legislation which is of vital importance to our Nation's economy.

The goal of realizing our Nation's full export potential has been heightened by today's conditions of recession and rising unemployment, and S. 2718, the export trading company bill, will bring us dramatically closer to realizing that goal.

The fact that our Nation continues to neglect a major share of our potential export business is inexcusable. It is inexcusable given today's rising levels of unemployment. It is inexcusable given the long string of consecutive trade deficits we have mounted, and the weakening of the dollar and added domestic inflation that have resulted from those deficits.

Mr. President, S. 2718 would encourage the provision of export trading services to tens of thousands of small- and medium-sized companies not now realizing their full export potential. The products of these companies would, in many instances, be highly competitive in world markets. It is essential that we do all we can to see that they reach those markets.

It is my strong belief that this bill will facilitate a marked improvement in our Nation's long-term export performance and trade posture.

The provisions in the bill which permit bank participation in the operations of export trading companies are, I believe, especially important to the effectiveness of this legislation.

Those provisions, like the bill itself, were the result of countless hours of delicate negotiations. It would be unwise and counterproductive for us to amend or delete these provisions here on the Senate floor.

Mr. President, in closing I would like to commend the junior Senators from Illinois and Missouri, and others, for their untiring efforts in drafting and redrafting this export trading company legislation. Their efforts, coming at this time of less than favorable economic circumstances, have done a tremendous service to our Nation's economy and businesses.

Mr. DURENBERGER. Mr. President, my Minnesota constituents are chomping at the bit to increase exports. Congressman BILL FRENZEL and I recently held our second trade conference in Minnesota and the attendance was outstanding. We had people from agriculture, high-technology companies, banks, and an entire range of other companies.

Their message was clear: Give us just a little encouragement and just a little relief from the present obstructions to trade, and we will start reducing our balance-of-trade deficit and improving our economy.

S. 2718 is a significant step in that direction and I wholeheartedly support it.

I am especially pleased to support the additional funding for SBA's participation in promoting export expansion. Numerous successful small businesses are just a step or two away from becoming international in scope. This added emphasis by SBA should help them take that all important step.

There is no reason why exports should account for only 7.5 percent of our GNP, the lowest percentage of any industrialized nation. There is no reason why we should not be the world's leading exporter instead of second to Germany and barely ahead of Japan. By freeing our business sector to more easily form export trading companies and associations we are following a successful pattern established by most European and Asian countries. These companies and associations provide the necessary economies of scale in financing, marketing and other areas to greatly increase the participation of smaller and medium-size companies in the export field.

We need to significantly close the gap between our exports and our imports. Foreign oil alone will cost close to $80 billion in 1980. This trade deficit continues to weaken the international value of the dollar.

Exports are already a significant factor in our economy. Nearly one-third of all farm production is exported. Over 12 percent of our employment is related to exports. The potential is even greater and I am glad to support this aid to fulfilling that potential.

CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, I have cleared this request with Mr. PROXMIRE. I ask unanimous consent that I may offer a cloture motion and that it be considered as having been entered on tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the bill S. 2718.

Robert C. Byrd, Alan Cranston, Jennings Randolph, Patrick J. Leahy, Claiborne Pell, Jake Garn, John Heinz, Adlai E. Stevenson, Lawton Chiles, Joseph R. Biden, Jr., Paul E. Tsongas, Max Baucus, Lloyd Bentsen, Henry M. Jackson, Bill Bradley, Robert Dole, Rudy Boschwitz, Dennis DeConcini, Thomas F. Eagleton, John C. Danforth.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that amendments in the first degree may be offered up until 1 p.m. tomorrow as though the Senate were in session tomorrow. I think this would be a courtesy we would extend to the distinguished Senator from Wisconsin if we go to cloture, and I would like to make this request as a courtesy to Senators who might oppose it.

Mr. PROXMIRE. Mr. President, I thank the distinguished leader. I want to be sure we have an opportunity to vote on the amendments this Senator offers and the Senator from Ohio and the Senator from Massachusetts offer.

Earlier today I obtained unanimous consent to have the Danforth amendment treated as original text for purposes of amendment. The Senator from Illinois introduced a whole series of amendments. They were excellent amendments in many cases, and they were offered as if they were committee amendments.

I am concerned that it may be those amendments may amend parts of the bill which our amendment might affect, and for that reason I ask unanimous consent that the Federal Reserve amendments, which I am sure the Senator from Illinois is fairly familiar with, be in order notwithstanding the fact that they may amend a part of the bill which the Senator's previous amendments have affected.

I also ask unanimous consent that the Metzenbaum-Kennedy amendment be in order under the same condition.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, would these amendments be germane otherwise under cloture?

The PRESIDING OFFICER. They have to be germane.

Mr. ROBERT C. BYRD. I understand that they would have to, but the Senator is asking unanimous consent that they be in order. Would they otherwise be in order?

The PRESIDING OFFICER. If the Senator gets unanimous consent they will be in order.

Mr. ROBERT C. BYRD. Yes. That is why I am reserving the right to object.

Can the Parliamentarian advise the Chair as to whether or not the amendments, the aforementioned amendments, would be germane?

Mr. PROXMIRE. They are 2276 and 2277.

The PRESIDING OFFICER. Amendment 2277 is germane. Amendment 2276 does not appear to be germane.

Mr. ROBERT C. BYRD. Mr. President, I will leave it up to the distinguished Senator from Illinois as to whether or not he wants to allow that amendment to come in under cloture. That amendment would not be permitted in under cloture. But if the request by Mr. PROXMIRE is agreed to, it would be allowed to come in notwithstanding the

invoking of cloture. I will leave it up to the distinguished Senator from Illinois.

Mr. STEVENSON. Mr. President, reserving the right to object, and assuming these amendments are germane, would they be in order as amendments to the bill as it is now amended?

The PRESIDING OFFICER. Amendment 2277 amends the bill in more than two places and will be subject to a point of order on that ground.

Amendment 2276 also amends the bill in more than two places and would be subject to a point of order on that ground.

Mr. STEVENSON. Would they not also be out of order as amendments to parts of the bill which have already been amended?

The PRESIDING OFFICER. The only restriction on amendments to a part of the bill already amended is if they directly amend an amendment already agreed to. These would not fall in that category.

Mr. STEVENSON. I thank the Chair.

Mr. President, I will object. I do not wish, however, to deprive the distinguished Senator from Wisconsin of a vote on his amendment, nor do I wish to deprive the Senator from Ohio of a vote on his amendment.

Therefore, if my friends, the authors of these amendments, were willing to agree to an order which established a time for such votes by the Senate, after even more time to debate, if that is their desire and if the majority leader is willing, I would not object. But, under these circumstances, I regret that I must do so.

Mr. PROXMIRE. Mr. President, I think the Senator from Illinois is reasonable. I understand his position.

I would agree to a time limitation. What the Senator, as I understand it, is suggesting here is that we agree to a vote, either at a certain time or with a certain amount of time allowed on each amendment, I think, under the circumstances that would be fine, if we qualify both amendments to say vote on one after an hour of debate. I do not know what Senator METZENBAUM wants to do. I would have to consult with him. But I think he probably would have something like the same time necessary.

I would not insist, under those circumstances on proceeding.

As the Senator from West Virginia knows very well, I can file a whole series of amendments and I can break this down into parts and so forth and qualify it and just not amend it in two places. But I think what we all want to do is get the votes on these amendments. We have discussed them at great length today.

Therefore, I would agree to a unanimous-consent agreement that would have us vote at a certain time on my amendment. I will do my best to urge the Senators from Ohio and Massachusetts to agree to have a vote at a certain time on their amendment.

Mr. STEVENSON. Mr. President, reserving the right to object, I thank the Senator and commend him for both his forthcoming and cooperative attitude.

I would have no objection to an order which established a time for the votes on these two amendments.

I do think, in order to accomplish our purpose, it would be necessary for such an order to guard against a number of additional amendments and that, therefore, the order might also rule out other amendments or establish a time for the vote on final passage.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on the return of the Senate on Wednesday a week from tomorrow, after the two leaders have been recognized under the standing order, and the order for the recognition of a Senator—I believe there is an order in?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. The Senate resume consideration of the pending measure, the Export Trading Act; that Mr. PROXMIRE be recognized to call up his amendment numbered 2276; that there be 1 hour debate thereon, equally divided between Mr. PROXMIRE and Mr. STEVENSON, and the vote then occur up or down on the amendment; after which there be 1 hour on an amendment by Mr. METZENBAUM, to be equally divided in accordance with the usual form; after which the Senate will proceed immediately to third reading, without further amendment, motion, debate, or point of order; after which the Senate proceed immediately to a vote on final passage, without further debate, motion, or point of order; and that there be no time for debate on a motion to reconsider the vote on final passage; provided further, that on an amendment by Mr. RIEGLE to provide assistance to small business to hire export managers, there be a 30-minute time limitation, the time to be equally divided in accordance with the usual form; and on an amendment by Mr. HELMS to strike the EDA, there be a 30-minute time limitation, equally divided in accordance with the usual form; and, of course, with the additional proviso that if the agreeement is entered into, the cloture motion that has been entered would be withdrawn.

Mr. STEVENS. Mr. President, reserving the right to object, and I do not think I shall object, how many amendments then are taken care of by this agreement and is it a closed agreement that there be no other amendments?

The PRESIDING OFFICER. It would not shut out second-degree amendments, but it would shut out the debate on second-degree amendments.

Mr. PROXMIRE. Mr. President, would the Senator consider modifying his unanimous-consent agreement to provide that there be no second-degree amendments? Because, otherwise, we have no way of knowing what is likely to come in. I would feel better, if the Senator from Illinois would not object.

Mr. STEVENSON. I have no objection.

Mr. ROBERT C. BYRD. Mr. President, I make that request.

Mr. PERCY. Mr. President, reserving the right to object.

Mr. STEVENS. If the Senator will withhold a minute, are we acquainted with the text of the four amendments? Are they identified in the request sufficiently to know the subject matter? I am sorry I came in late in the discussion.

The PRESIDING OFFICER. The subject matter has been identified.

Mr. STEVENS. No other first-degree amendments would be in order?

The PRESIDING OFFICER. The Senator is correct; or second-degree amendments.

Mr. STEVENS. I heard that, yes. I thank the Chair.

Does the Senator from Illinois wish to object?

Mr. PERCY. Mr. President, I reserved the right to object to inquire, because the Senator from Illinois has a particular problem. My plane at Dulles does not land until 5 o'clock Wednesday night. I intended fully to be here tomorrow to work and hoped that we would not be having business that would require a lot of voting.

The PRESIDING OFFICER. Will the Senator use the microphone. It is very difficult to hear.

Mr. PERCY. Mr. President, I wondered what the timing would be on these votes and whether or not it would be possible to back them up or push them off until Thursday morning when more Senators would be back, considering that there would be at least four votes. We would get all of the debate out of the way and just have them when the full Senate would be here.

Mr. ROBERT C. BYRD. Mr. President, I do not wish to put off votes until Thursday. We are knocking tomorrow off. The Senate was supposed to be in tomorrow. I do not think we should extend this to add another day to the Labor Day break. I say this respectfully to the distinguished Senator. It is perfectly all right with me to have the votes occur, say, at 3 or 4 o'clock on Wednesday afternoon, but to put them over until Thursday I would not be agreeable to.

Mr. PERCY. Would it be possible to have them back-to-back beginning at 6 o'clock and have them finished up by 7 o'clock? That would enable the Senator from Illinois to get back. I would not make that request other than the fact that it is a very important engagement that I have on the west coast and there does not seem to be any way I can get back that I know of before 5 o'clock. We land at Dulles. It is not unusual for us to be here until 6:30 or 7 in the evening. Having been away, that would certainly accommodate the Senator from Illinois very much and I do want to vote on this measure.

Mr. ROBERT C. BYRD. Of course, I do want to accommodate the Senator from Illinois but I do not want to inconvenience the entire Senate to do it.

Mr. PERCY. It is just a question of getting a plane out of the west coast that would get here in time.

Mr. ROBERT C. BYRD. I would be glad to give the Senator from Illinois a

live pair if he wishes to have a live pair, I would be glad to do that.

Mr. PERCY. No, I would want to vote on this measure. The Senator knows how strongly I feel about it. I certainly want to be as accommodating as I possibly can be. The question that I have is in the past we have backed up votes. We are certainly planning to be here up until 7. If there is any reason someone cannot stay here until 7, the Senator from Illinois would weigh his request against that Senator. We would ordinarily begin this voting process by 3 or 4 o'clock. The Senator from Illinois is asking for a couple more hours.

Mr. ROBERT C. BYRD. The voting process, as laid out in the request, would probably depend on what time the Senate comes in on its return. I had earlier thought we would come in at 10 o'clock that day because the Senate will have been out a week and a day, or a week. The Senate is only going to have about 25 days, including Saturdays, give a day or two one way or the other, when the Senate returns until it goes out again. I will get the Senator live pairs on his votes, if he wishes, or try to get live pairs for him, but I would like to see the Senate get on with its business. There may or may not be other business that would take us up to 6 or 7 o'clock. If there were, I would have no particular problem. There may be other Senators who are going to leave. If we enter into an agreement tonight to accommodate a Senator to have these votes not occur before 6 or 7 o'clock, there may be Senators who are not here today who plan to leave at 5 o'clock or 6 o'clock, and thereby the would be discommoded. I wish we could accommodate every Senator.

Mr. STEVENS. Reserving the right to object, Mr. President, what time will we be coming in on Wesnesday, if I might ask the leader?

Mr. ROBERT C. BYRD. I plan to come in at 10 o'clock because we are going to take up another bill, the veterans vocational rehabilitation bill.

Mr. STEVENS. We have a series of special orders also that morning, do we not?

Mr. ROBERT C. BYRD. We have one special order.

I am advised there are three. We are going to have the veterans vocational rehabilitation bill.

The PRESIDING OFFICER. The Chair wishes to correct a statement. There are no special orders on Wednesday. On Thursday there are special orders.

Mr. STEVENS. I might state to the Chair, it would be my hope that the requests of Senators HATCH and BAKER for 15 minutes each that morning would be granted. I am just trying to figure out the time in terms of this time agreement. If the time did start running on this bill at noon, is the leader still going to take up the veterans bill?

Mr. ROBERT C. BYRD. Yes. Under the order that was entered earlier the veterans vocational rehabilitation bill would be coming up on Wednesday following the disposition of the Export Trading Act.

Mr. STEVENS. That would be afterward, under the order?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. Would it be convenient to take it up before, under the arrangements we are now preparing, instead of awaiting the completion of the export bill?

Mr. ROBERT C. BYRD. There is no time agreement on the veterans vocational rehabilitation bill.

Mr. STEVENS. But it was contemplated it would be the pending business when we came back?

Mr. ROBERT C. BYRD. That is true. But it was also contemplated that the Senate would complete action on the now pending business before we went out today.

It is perfectly all right with me, if it is agreeable to the distinguished Senator from Illinois and the Senator from Wisconsin——

Mr. STEVENS. I spoke to the Senator from Wyoming (Mr. SIMPSON) and he indicated he was prepared to take that up when we came back.

Mr. ROBERT C. BYRD. If they have no objections to go ahead with the veterans vocational rehabilitation bill, it is all right with me.

The request that I have just offered was to the extent that immediately after the two leaders are recognized on Wednesday and the order for a Senator—I thought an order had been entered—the Senate would return to this bill, which means that if this order is entered, the Senate will be back on this bill on that Wednesday. We have a time agreement on it, if it is entered into, and it would have to be disposed of before we go to the veterans vocational rehabilitation bill. If Senators want to proceed with the two in reverse, it is all right with me.

Mr. STEVENS. Does the Senator from Wisconsin see any problem? That would be my request on the leadership. Unfortunately, I will have to miss the votes on this bill in any event. But I do think we might take up the veterans bill after my discussion with Senator SIMPSON.

Mr. ROBERT C. BYRD. May I say also that if this request is not agreed to, the Senate will be voting at about an hour and 15 minutes after the Senate comes in, the Senate will be voting on cloture on this bill, and the Senator from Illinois would miss that vote. I have a considerable degree of confidence that cloture will be invoked, in which case there will be votes all afternoon. So whether or not we get the agreement, I think what is going to happen is that we will be voting all afternoon if we do not get the agreement, which would mean that we would have the votes in any event.

Mr. STEVENS. Might I ask my good friend as a matter of accommodation if we could not change the order, to go ahead with the time agreement as outlined, to take up the veterans bill, grant the request of Senators HATCH and BAKER for their 15 minutes following the other individual special order, and complete the veterans bill prior to taking up this bill under the time agreement as specified? That would carry the matter into probably Thursday morning at the latest in consideration of this bill.

Mr. ROBERT C. BYRD. Mr. President, in any event, let me withdraw that request temporarily.

ORDER FOR RECOGNITION OF SENATORS BAKER AND HATCH ON WEDNESDAY, SEPTEMBER 3, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. HATCH and Mr. BAKER be recognized, each for not to exceed 15 minutes, on Wednesday a week from tomorrow, following the standing order for the recognition of the two leaders.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

Mr. STEVENS. I thank the Senator.

Mr. ROBERT C. BYRD. Mr. President, what is the wish of Mr. STEVENSON and Mr. PROXMIRE? Do they wish to reverse the order of these two bills?

Mr. STEVENSON. Mr. President, is there any estimate as to how long the veterans bill will take?

Mr. ROBERT C. BYRD. May I ask the distinguished senior Senator from Illinois, when he took on the engagement in California, did he not take into consideration that they might be some rollcall votes during the day?

Mr. PERCY. The Senator from Illinois miscalculated totally. I cleared the deck for tomorrow, figuring we would be here right up until the last minute, and took the chance that, with all the family wedding and a lot of family members out there, I just hate to break into that. I was planning on landing at 5 o'clock. I thought we were coming in at noon so that we would not be voting immediately.

Mr. STEVENS. Mr. President, if the Senator from Illinois will yield to me, I have just been informed that we have an objection on this side to taking up the veterans bill prior to the export bill. I reluctantly report that to the leadership.

Mr. CRANSTON. Prior to when?

Mr. STEVENS. Prior to the export bill. It was the understanding that it would follow the export bill and there is an objection that I have to raise.

Mr. PROXMIRE. Mr. President, I am perfectly willing to have this come any time at all at the convenience of the leader. Any time he and Senator STEVENSON want to schedule it is fine with me. We can have it early on Wednesday, late on Wednesday, Thursday—whenever.

Mr. ROBERT C. BYRD. I thank the Senator from Wisconsin. This is characteristic of him and I am most appreciative.

Mr. PERCY. Would it be possible, Mr. President, is it acceptable to those managing the bill to have the votes either on Wednesday, beginning at 6 o'clock or 6:15, or Thursday morning? Finish all the debate on Wednesday and have a time certain for Thursday morning or Wednesday morning?

Mr. ROBERT C. BYRD. Mr. President, suppose there is a Senator who has engagements on Thursday morning who is

not here now. We are going to discommode that Senator.

I think the time will have to come when Senators simply have to take their chances. They either accept an engagement or they let the engagement go. If they accept the engagement, they miss rollcall votes. We are all adults here and we know what our responsibilities and duties are in the Senate. We know that we either make a promise and keep it to speak elsewhere, or we turn down the engagement and stay here and make the rollcall votes. I sometimes marvel at how the Senate stands the strains of accommodating every individual Senator.

Mr. CRANSTON. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. CRANSTON. Is there not an agreement—not a time agreement, but an agreement—that the veterans vocational rehabilitation bill will be laid down?

Mr. ROBERT C. BYRD. Oh, yes, Mr. President.

Mr. CRANSTON. So it is already in the works, despite any objection on that side to taking it up.

Mr. ROBERT C. BYRD. Yes, that is true, Mr. President. But if this request is agreed to, the cloture motion will be vitiated. If the request is not agreed to, then there will be a vote on cloture, and I assume it will be invoked. The last time a cloture motion was entered, cloture was invoked the very first time around. If that is the case, then we shall have rollcall votes on that Wednesday afternoon, like it or not.

Mr. President, I have indicated my willingness to give the distinguished Senator a pair on each of the votes if that would assist him. I do not like to give pairs, because I like my rollcall votes to count back home, where the people are watching my voting record.

Mr. President, I renew the request.

The PRESIDING OFFICER (Mr. RIEGLE). Is there objection?

Mr. STEVENS. Reserving the right to object, does this mean that the export bill will go ahead of the veterans bill?

Mr. ROBERT C. BYRD. It does, Mr. President.

Mr. STEVENS. The agreement that was previously mentioned, four amendments in the first degree, no amendments in the second degree and this expression will follow upon no amendment—was there some request for no time for reconsideration?

Mr. ROBERT C. BYRD. Yes, there will be no time for no debate on the motion to reconsider.

The PRESIDING OFFICER. The Chair advises that it will be the first order of business upon returning on Wednesday.

Is there objection?

The Chair hears none. It is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator from Illinois for yielding in this instance to the needs of the Senate. I personally appreciate it very much.

Mr. STEVENS. May I ask the leader about the balance of the evening? Are we going to try to finish this matter this evening?

Mr. CRANSTON. May I ask another question? Are we going to lay down the vocational rehabilitation bill, and could we deal with the Dole amendment, which is noncontroversial? We can take that very swiftly.

Mr. ROBERT C. BYRD. The veterans legislation will automatically come down at the close of business under the order for opening statements only. If Senators would like to allow an amendment or so this evening——

Mr. DOLE. I have one that they are willing to accept, if I can find my staff.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. DOLE may call up an amendment to the veterans vocational rehabilitation bill today, it being understood that the managers will accept the amendment and that there will be no rollcall vote.

Mr. DOLE. It is the naming of a hospital.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

It is so ordered.

ORDER OF BUSINESS

Mr. STEVENS. Mr. President, may I ask my friend the leader—we have an increasing number of people who are trying to leave, if it is possible to leave this evening. Is it the intent to have votes tonght? The ERISA matter will be worked out.

Mr. ROBERT C. BYRD. Mr. President, is there any intention to request the yeas and nays on the ERISA matter? I see no indication of such.

Mr. STEVENS. I previously checked that on my side and the indication was that there would be no requests. I assume there will be no further votes this evening.

Mr. ROBERT C. BYRD. Mr. President, I state that there will be no further rollcall votes today

EMPLOYEE INCOME RETIREMENT SECURITY ACT

Mr. ROBERT C. BYRD. Mr. President, under the order of yesterday, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 3904.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill amendment of the Senate to the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to mutiemployer plans, and for other purposes.

(The amendment of the House is printed in the RECORD of August 25, 1980.)

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the following members of the staff of the Committee on Labor and Human Resources be accorded the privileges of the floor during the consideration of this matter, and during all rollcall votes thereon: Steven Sacher, Gary Ford, Michael Goldberg, Peter Turza, Mildred Dunmore, Susan Painter, Irene Linton, Martin Jenson, Thomas Altmeyer, and Luther Washington.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 1538

Mr. WILLIAMS. Mr. President, I move that the Senate concur in the House amendment to the Senate amendment to H.R. 3904 with a further amendment, which I send to the desk.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from New Jersey (Mr. WILLIAMS) proposes an unprinted amendment numbered 1538 to the House amendment.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike section 414 and insert in lieu thereof the following:

"Sec. 414. (a) Section 3304(a)(15) of the Internal Revenue Code of 1954 (relating to requirements for approval of State unemployment compensation laws) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof the following: 'except that—

'(A) the requirements of this paragraph shall only apply in the case of a pension, retirement or retired pay, annuity, or other similar periodic payment under a plan maintained (or contributed to) by a base period or chargeable employer (as determined under the State law), and

'(B) the State law may provide for limitations on the amount or any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment;'

"(b) The amendment made by subsection (a) shall apply to certifications of States for 1981 and subsequent years."

Mr. WILLIAMS. Mr. President, last month we amended and approved, by a vote of 85 to 1, H.R. 3904, the multiemployer Pension plan Amendments Act of 1980. However, over objections by Senator JAVITS, myself, and others, the Senate included amendments to such unrelated laws as the Occupational Safety and Health Act, the Mine Safety and Health Act, and the Civil Rights Act of 1964. Earlier this week, the House of Representatives deleted these nongermane amendments, made several germane changes, and passed the bill, as amended, for a second time. The Senate must now pass on the most recent House version of the bill.

Our decisions today will likely determine the fate of this legislation. So I ask my colleagues to weigh its merits carefully. I ask that this great institution not deny 8 million Americans, working and

Nothing, in my opinion, has more potential for becoming an explosive domestic issue during the next decade.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 200

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States:

"ARTICLE

"SECTION 1. Neither the United States nor any State shall make or enforce any law which makes distinctions on account of race, color, or national origin.

"SEC. 2. All laws of the United States or any State which prohibit discrimination on account of race, color, or national origin by private individuals or enterprises shall not be construed to permit the establishment or maintenance by such private individuals or enterprises of any program or policy that makes distinctions on account of race, color, or national origin.

"SEC. 3. Neither the United States nor any State shall establish or maintain, or require or permit any private individual or enterprise within the scope of section 2 to establish or maintain, goals, quotas, timetables, ratios, or numerical objectives which make distinctions on account of race, color, or national origin.

"SEC. 4. Neither the United States nor any State shall make any law which prohibits any person in the absence of intent to discriminate on account of race, color, or national origin, to take actions, otherwise lawful, which have a disproportionate impact or effect upon individuals on the basis of race, color, or national origin.

"SEC. 5. All limitations in this article upon laws, regulations, orders, programs, or actions which make distinctions on account of race, color, or national origin shall encompass laws, regulations, orders, programs, or actions which either make express distinctions on account of such race, color, or national origin or which are intended to result in distinctions on such account.

"SEC. 6. No order or decree shall be issued by any court of the United States or of any State that makes distinctions on account of race, color, or national origin (except to the extent that such order or decree is necessary to remedy the enforcement of a law by the United States or any State, or the establishment or maintenance of a program or policy by a private individual or enterprise, that is in violation of this article).

"SEC. 7. The Congress and the States shall have power to enforce this article by appropriate legislation".

Mr. HATCH. Mr. President, it is common when criticizing "progressive" schemes of reform to pay tribute to the good intentions of their framers, no matter how foolish their plans may be, or how unscrupulous their attacks upon oneself. This is part of our modern political culture, where loudly-proclaimed beneficial intentions toward the multitude are held to justify any number of atrocities inflicted upon the individual.

I am going to depart from that tradition here. I believe affirmative action is an assault upon America, conceived in lies and fostered with an irresponsibility so extreme as to verge upon the malign. If the Government officials and politicians who presided over its genesis had injected heroin into the bloodstream of the Nation, they could not have done more potential damage to our children and our children's children. We cannot look upon their work with equanimity; nor should we. It may take years, even decades, to redress this wrong. But the time to start is now.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the pending business (S. 2718), which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 2718) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

The Senate resumed the consideration of the bill.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin (Mr. PROXMIRE) is recognized to call up amendment No. 2276, on which there shall be a 1-hour limitation, to be equally divided and controlled by the Senator from Wisconsin (Mr. PROXMIRE) and the Senator from Illinois (Mr. STEVENSON), to be followed by an up-or-down vote thereon.

The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, in view of the fact that Senator STEVENSON is not here, I suggest the absence of a quorum, and I ask unanimous consent that the time not be taken out of either side until Senator STEVENSON arrives, at which time I will ask that the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Who yields time?

Mr. HEINZ. Mr. President, I ask unanimous consent to proceed for not to exceed 1 minute.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I want to call my colleagues' attention to an editorial in last Saturday's Chicago Sun Times. That editorial, I think, makes one of the strongest cases that can be made for the Export Trading Company Act of 1980. After acknowledging the risks which Senator PROXMIRE correctly pointed out of breaching the traditional separation of banking and commerce, it goes on the argument that these are risks well worth the gamble, because our trade deficits—and their attendant costs to our economy—are an economic problem which we must begin to address immediately. As I have argued elsewhere, if we try to live in a risk-free society we may also be creating the conditions for an opportunity-free society.

Mr. President, I ask unanimous consent to have that editorial printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

PASS THIS TRADE BILL

The Senate this week, in a rush to recess for Labor Day, left untouched a bill by Sen. Adlai E. Stevenson (D-Ill.) to create export trading companies and new trade associations. Too bad. The bill can help the country escape the trade doldrums and expand U.S. exports.

Every day of delay hurts. Literally thousands of American products and services would be highly competitive abroad. Yet too many small and medium-sized companies lack the expertise and the funds they need to develop new markets overseas.

As a result, America's share of world exports is dropping. While exports account for nearly 23 percent of West Germany's gross national product, they make up less than 8 percent of this country's. That's shocking.

And it needn't be that way.

The trading companies Stevenson wants would be "export middlemen," or agencies to help smaller producers through the maze of regulations and unfamiliar conditions any new exporter faces. The idea isn't new. U.S. competitors in Europe, Japan, Hong Kong and Korea have used such companies for years.

The simple fact is that another maze—with too-tight banking rules and antitrust uncertainties—has discouraged the formation of trading companies here. Stevenson would lower some of the barriers and offer tax and financing incentives to create the companies.

And the bill wisely includes safeguards against abuses. For example, regulators could examine and supervise a bank's participation in a trading company and set conditions on its operation. Also, bank participation in trading companies would be limited.

So what's the problem? Sen. William Proxmire (D-Wis.) fears bank involvement in trading companies will warp their credit judgment. He wants stricter provisions, so strict that some experts say Proxmire's standards would prove impossible to meet.

The choice, then, is this: We can be so afraid to try something new that U.S. exports remain bottled up. Or the country can gamble on Stevenson's bill, with its safeguards.

That bill would benefit farmers and service companies as well as manufacturers. It would help cut trade imbalances. It would help create jobs. It would promote more competition and thereby help fight inflation.

That makes the bill worth the gamble. The Senate should bet on it when recess is over.

Mr. HEINZ. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be taken out of both sides equally.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond 15 minutes, and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES

Mr. ROBERT C. BYRD. Mr. President, what is the business before the Senate?

The ACTING PRESIDENT pro tempore. The clerk will state the pending business.

The assistant legislative clerk read as follows:

A bill (S. 2718) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, and I ask that the time not be charged to either side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LEVIN). Without objection, it is so ordered.

AMENDMENT NO. 2276

(Purpose: To encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally)

Mr. PROXMIRE. Mr. President, pursuant to the order previously entered, I call up printed amendment No. 2276 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE), for himself, Mr. TOWER, Mr. KENNEDY, and Mr. METZENBAUM, proposes an amendment numbered 2276.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike lines 19 to 25 on page 9; strike pages 10 through 15; and strike lines 1 through 9 on page 16; and insert in lieu thereof the following:

"(b) Notwithstanding any prohibition, restriction, limitation, condition or requirement of any other law, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of it consolidated capital and surplus (25 per centum in the case of an Edge Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidence of ownership of one or more export trading companies. A banking organization may—

"(1) invest directly or indirectly up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency;

"(2) invest directly or indirectly in excess of an aggregate amount of $10,000,000 in one or more export trading companies only with the prior approval of the appropriate Federal banking agency. Any banking organization which makes an investment under authority of (1) above shall promptly notify the appropriate Federal banking agency of such investment and shall file reports on such investment as such agency may require.

"(c) The following limitations apply to export trading companies whose shares are held by one or more banking organizations and to the banking organizations holding such shares—

"(1) except as provided in subsection (d), no banking organization may acquire 20 per centum or more of the voting stock or otherwise control an export trading company;

"(2) except as provided in subsection (d), no banking organization may acquire voting stock of an export trading company if such acquisition would result in 50 per centum or more of the voting stock of the export trading company being owned by banking organizations;

"(3) neither an export trading company nor a banking organization that owns its shares shall make any representation that the export trading company and the banking organization are affiliated. For this purpose, the name of such export trading company shall not be similar in any respect to that of a banking organization that owns its shares;

"(4) the total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of credit by the banking organization and its direct and indirect subsidiaries shall not exceed 10 per centum of the banking organization's capital and surplus;

"(5) a banking organization that owns any voting stock of an export trading company shall divest such stock if the export trading company takes a position in commodities or commodities contracts other than as may be necessary in the course of its export business;

"(6) no banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(d)(1) With the prior approval of the Board of Governors a bank holding company may acquire 20 per centum or more or otherwise control an export trading company.

"(2) With the prior approval of the Board of Governors, a bank holding company may acquire voting stock of an export trading company if such acquisition would result in 50 per centum or more of the voting stock of the export trading company being owned by banking organizations.

"(3) The Board of Governors shall not approve an application under this subsection unless it determines on the basis of the record that—

"(i) the export trading company will limit its activities to exporting or facilitating the exportation of specific goods or services which would not be exported to any significant extent without the involvement of an export trading company;

"(ii) investment by a bank holding company in excess of the limitations in subsection (c) is clearly necessary in order for the export trading company to export or facilitate the export of goods or services;

"(iii) the export trading company will limit its activities to a level consistent with the need for minimizing the financial risk of the investing bank holding company and maintaining a separation between banking and commerce, as determined by the Board.

"(4) The Board, upon receiving an application under this subsection, shall provide a copy to the appropriate Federal banking agency of the subsidiary banks of the bank holding company and shall request the comments of that agency.

"(e)(1) In the case of every application under this section, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns, and to improving the competitiveness of United States exports in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under this section unless it finds that there are significant export benefits and that such benefits clearly outweigh in the public interest any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

"(2) In approving any application submitted under this section the appropriate Federal banking agency may impose such conditions which in the circumstances of the application it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices.

"(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal banking agency must give due consideration to the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company and the identity and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions which unnecessarily disadvantage, restrict or limit export trading companies in competing in world markets or in achieving the purposes of section 10a of this Act.".

On page 17, line 19 "(e)(1)" should be changed to "(f)(1)" and on page 13, line 12 "(f)(1)" should be changed to "(g)(1)".

Mr. PROXMIRE. Mr. President, this is the so-called Federal Reserve amendment recommended by the Federal Reserve Board, and it is an amendment that they feel very strongly about because of the profound effect that this bill can have on banking.

For more than 100 years banking and commerce have been separated and I think that has served the country extremely well. There is no question that we do have effective competition when one competitor is owned by a bank and the other competitor is not, particularly in times of credit stringency.

For that reason we feel that the bill as proposed by Senator STEVENSON, in

substance, is good and constructive and can be very effective. but we wish to see a little more protection against having a willy-nilly ownership by banks of firms that are in commierce.

What the amendment does is not to prohibit banks from owning trading companies but simply requires that the Federal Reserve have an opportunity to act and make a decision for or against the trading company being owned by a bank and to do so on the basis of this criteria: is it necessary and would it significantly improve exports if the bank did own the trading company? If the Federal Reserve decides that these standards would not be satisfied, the Federal Reserve could then say no. But in any case a bank could hold a 20 percent minority position in the trading company.

Mr. President, this legislation is titled the Export Trading Company Act of 1980. While Congress has enacted various truth-in-advertising, truth-in-labeling and truth-in-lending statutes, it has never seen fit to enact a Truth-In-Short-Title Act. If such a law were on the books it would not be possible to clothe the wolf in sheeps clothing.

Under the Truth-In-Short-Title Act, this legislation would be required to be titled the "Mega Bank-Big Business Cartel Act of 1980." That is exactly what this bill is. But it seeks to clothe itself in the mantel of exports. Potentially, this legislation will curtain exports, not increase them. A handful of large money center banks are behind this legislation. They have teamed up with big business exporters who want to fix prices and allocate markets worldwide. I have no doubt that the mega-banks and big business will increase their profits when they raise their prices. But history teaches us that higher prices and bigger profits often result in lesser sales. This will mean less exporting—and more importing by these trading companies. And it derogates the world free-market economy that we work so hard to strive for.

Mr. President, I must say I am delighted to see the editorial that appeared yesterday, not in some liberal antibusiness publication but in the No. 1 probusiness publication in the country, the Wall Street Journal. It is headed "Export Gimmickry." This is what the editorial says:

EXPORT GIMMICKRY

If you want to know what's wrong with the way Washington policymakers and many American businessmen think about export promotion, take a look at a bill the Senate is scheduled to vote on tomorrow.

The bill is the Export Trading Company and Trading Association Act of 1980, sponsored by Sen. Adlai Stevenson of Illinois. It would permit banks to take limited equity positions in U.S. export trading firms. And it would broaden the antitrust exemptions, currently available under the Webb-Pomerene Act of 1918, for American firms that fix export prices, allocate foreign market shares or otherwise cooperate in joint selling operations overseas. In particular, the new bill would extend the antitrust exemptions to service as well as merchandise industries, and it would set up a certificat ion procedure to assure exporters against antitrust prosecution if they operate within the scope of the law.

At best the Stevenson bill is mere gimmickry. It is being marketed under the false pretense that it will help encourage the development of American trading companies comparable to Mitsubishi, Mitsui, C. Itoh and the other companies that have been so effective in selling Japanese wares around the world. Since Japanese banks often have ownership positions in their country's trading companies, the Stevenson bill's proponents argue that investments by American banks will help this country develop similar institutions. And since Japan and most Western European countries exempt exporting from domestic antitrust laws, the bill's advocates argue that American trading firms need a similar dispensation.

All of which is so much hokum.

As I say, this is the Wall Street Journal, a newspaper whose editorial position has been quite critical of restraint by our antitrust laws in some cases. But in this case even the Wall Street Journal sees that it is hokum. They go on to say:

The success of Japanese trading companies lies not in their ownership structures or their antitrust freedoms, but in their detailed knowledge of production sources and market opportunities around the world, as well as their logistical skills in carrying through complicated international transactions. Nothing stops American firms from offering similar services, and indeed many already do. And there are hundreds of foreign sales agents, manufacturers' representatives and so on to serve the export needs of American industrialists.

But the Stevenson bill does pose some dangers. By endorsing and expanding the principle of export cartels, it undermines the U.S. commitment to an open international trading system. How can we complain about OPEC or Third World cartels if we encourage our sulphur or carbon black producers to form their own export cartels?

The Stevenson bill has been endorsed by some 60 Senators, the Carter administration, the National Association of Manufacturers, the U.S. Chamber of Commerce and many other business organizations. The attention of policymakers would be better directed at silly impediments to exports, such as the double taxation of U.S. citizens abroad. The attention of businessmen would be better directed to learning about foreign markets and selling there.

Higher prices, profits and economic power. That, Mr. President is why this legislation seeks to give administrative enforcement of the antitrust laws to the Commerce Department. Imagine that—enforcement over laws affecting competition to the Government agency whose job it is to cater to big business. That is also why there are no threshold standards in this legislation requiring the regulatory agencies to make positive findings relating to exports before they could approve an application under the bill.

Let us call a spade a spade. This bill is primarily designed to put the big American banks in the same position as their big British cousins. Helping exports is secondary to insuring the power of big banks in domestic as well as international markets.

Mr. President, the Federal Reserve and the Federal Deposit Insurance Corporation—the two agencies responsible for the safety and soundness of our financial system—oppose this legislation as it presently stands. The Independent Bankers Association—representing over half the banks in this country (predominantly the smaller banks)—testified in opposition to the legislation as it stands.

I will not oppose any reasonable effort truly aimed at increasing exports. I believe this legislation can be made workable by the adoption of the Proxmire-Federal Reserve amendment. It is offered in the spirit of compromise—to meet the concerns of those responsible agencies of Government and private enterprise who oppose the bill.

Mr. President, this amendment was drafted by the Federal Reserve and forwarded to me by Chairman Volcker.

First, let me say as clearly as I possibly can that I do not oppose the formation of export trading companies and bank participation in their ownership or even their control provided we go about it in a rational way. I think the bill, as drafted, presents too high a risk of undermining sound public policies that have been in effect for generations requiring a separation between banking and commerce in our economy. I do believe that the Federal Reserve amendment manages those risks in an acceptable way. I agree that we should make a greater effort to export—so I would take some risk; but like the Federal Reserve, I think we should do so prudently.

Let me describe the Proxmire-Federal Reserve amendment. The amendment would generally permit banks and bank holding companies to own up to a 20 percent noncontrolling interest in an export trading company. In special circumstances, the amendment would permit bank holding companies to control or own up to 100 percent of an export trading company upon prior approval of the Federal Reserve upon showing in an application that the export trading company's activities will be limited to goods or services which would not be exported without the involvement of the export trading company and that the bank holding company make a showing that it contributes to the export need by controlling the export trading company.

Mr. President, these are reasonable requirements. The power to control our export trading company—a company which will be permitted to engage in trading commodities and all manner of manufactured goods for its own account and marketing such goods—is a significant break of our historical policy of separating banking from commerce. Control carries with it a commitment to the enterprise which far exceeds the equity investment. Control also carries with it the ability to exert pressure in the marketplace against competitors of companies which do business with this export trading company.

It is altogether fitting, therefore, to reasonably scrutinize control situations.

The Chairman of the Federal Deposit Insurance Corporation said on the question of control:

Advocates of bank investment in export trading companies point to the expertise in foreign trade the banks could bring to such companies. We are not convinced that banks—other than a few money center or major regional banks—have any particular expertise in foreign markets". The Chairman goes on to say our particular concern with this portion of the bill is that it would allow banks to acquire control of export trading

companies. If a bank's investment in a company is limited to a 20 percent share, and the bank does not manage the company's operations, there would be substantially less likelihood that a bank would feel legal business or moral obligations to divert substantial resources to the trading company should it encounter serious financial difficulties.

The Chairman of the Federal Reserve has stated that:

It continues to be my view that banking organizations should not generally be permitted to control export trading companies in view of the implicit commitments of bank resources, the increased financial risk that accompany control and the need to maintain the line between banking and commerce.

Governor Wallich of the Federal Reserve who is, as we all know, not only a distinguished Governor of the Federal Reserve, but an eminent economist, recognized worldwide, a former top professor at Yale University, and a man who, I recall, has testified before the Joint Economic Committee as one of the top economists we could get in areas of this kind, and who has served on the Federal Reserve Board now for a number of years, who is a seasoned expert in this area, and who has been more active in the area of international finance than any Governor I know, said this:

Extension of the investment powers of banking institutions to include companies that buy and sell goods and services for their own account would go far beyond existing financial facilities. Such an extension would raise basic questions regarding the traditional separation of banking and commerce. This tradition, which stands in sharp contrast to the practice in some countries abroad, helps ensure that banks will remain impartial arbiters of credit and contribute to a healthy competitive environment in the commercial sector.

Now let us match the standards for control in the Proxmire-Federal Reserve amendment—against what the authors of the bill seek to accomplish. The findings in the bill state that tens of thousands of American companies produce exportable goods or services but do not engage in exporting; that exporting requires skills for which smaller producers cannot realize economies of scale; that export trading companies in which banks participate can provide these skills; and that bank participation is necessary to reach the significant potential of U.S. exporters.

Mr. President, let us take the bill's findings at face value. All I ask—all that the Federal Reserve asks, all that the Federal Deposit Insurance Corporation asks, all that the small bankers of this Nation ask—is that before a banking organization be permitted to control an export trading company that it file an application which shows how it will achieve the stated purposes of the legislation, first that its activities will actually enhance markets not now served and second, that the bank actually contribute expertise to enhancing export markets not now served.

Mr. President, the Proxmire-Federal Reserve amendment is a reasonable amendment. The fact that the opposition to it is so fearce shows to me that something else is at stake. Let us not kid ourselves. We all know what it is. The big banks do not want any standards. They do not want to have to show how they will enhance exports.

What they will do is skim the cream and use these trading companies to compete unfairly for banking business.

Mr. President, the Proxmire-Federal Reserve amendment will surely result in a more competitive export industry than would result from the bill as drafted. We can all be sure that if this bill goes through as drafted, the banks will dominate the export trading company market. This will discourage new entry and diversification. On the other hand, if bank participation is limited to situations where they can provide a legitimate marketing expertise, they are not likely to be dominent, competition is likely to be enhanced, and exports increased.

Finally, the Proxmire-Federal Reserve amendment will permit only bank holding companies to control export trading companies. Without this amendment three separate banking agencies will administer the statute. The pressure toward permissive regulation will be uncontrollable. Chairman Burns said:

The present regulatory system fosters competition-in-laxity. Even viewed in the most favorable light, the present system is conducive to subtle competition among regulatory authorities, sometimes to relax constraints, sometimes to delay corrective measures. I need not explain to bankers the well-understood fact that regulatory agencies are sometimes played-off against one another.

Mr. President, that is exactly what will happen if this bill is not amended. Three bank regulators to be played off one against the other by the banks. I hope the Senate will not inflict this wound on the public interest. We are here about to give substantial new powers to the banking community. I hope we shall have the wisdom to see to it that it is administered rationally.

By limiting control situations to bank holding companies we also pay due deference to our Nation's dual banking system. The Bank Holding Company Act does not prevent a State from exercising its inherent powers. In contrast, the bill as now drafted permits national banks to control export trading companies even if a State specifically prohibited State chartered banks from controlling export trading companies. Since this legislation breaches a 100-year separation between banking and commerce, I believe we should give the States an opportunity to be heard on this important issue if they want to be heard.

The Proxmire-Federal Reserve amendment allows everything that the sponsors of the bill say they want without the great risk of harm we have in the existing bill.

Mr. President, I reserve the remainder of my time and yield the floor.

Mr. STEVENSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. STEVENSON. Mr. President, the only countries which enjoy high levels of growth and employment without unacceptable levels of inflation are those which compete and compete successfully in a newly competitive world. They go all out to produce efficiently, market aggressively, and pay the oil bill. Those nations do not include the United States.

The United States is losing its share of world markets. Its exports are not growing as rapidly as are the exports of other industrial countries.

Our current account has been in deficit for most of the past decade. Its improvement recently is owing to a recession at home, higher growth rates abroad, that is to say, and that will change as the recession becomes worldwide and decreases demand in foreign countries for U.S. products.

The current account deficit which has been cited in this debate has shown some improvement in recent years, largely as a result of a return on foreign investments, investments made by the United States abroad. Those investments, Mr. President, while they are reflected in the current account balance, are not reflected in increased employment for American workers.

There is a large question, in my mind, at least, as to whether the United States should expect to live off of its investment earnings forever. Those earnings reflect the former strength, not the current weakness of the American economy. The competitiveness of the United States, which once made possible both exports and direct investment abroad, is now declining.

Much has also been said in this debate about the importance of productivity, the efficient production of goods and services. I agree entirely that it is essential that the United States improve the efficiency with which it does produce goods and services. But it is essential that we do both; that is to say, produce goods that are competitive in the world and then market them aggressively in the world. The marketing in itself, including this measure which will facilitate the creation of American trading companies, will enhance our productivity. Productivity is a factor of economic growth. Recession is not good for productivity. Our experience proves that.

It is growth and associated investments in R. & D. and in plant which, more than anything else, enhance productivity, and it is the markets of the world which offer us the chance for that economic growth.

Mr. President, the distinguished Senator from Wisconsin has proposed an amendment which is addressed to his concerns about the participation of banks in trading companies. It is to that amendment that I want to address most of my comments.

First, it should be made clear that participation by banks is already carefully circumscribed by this bill. U.S. banks could not invest more than $10 million or acquire a controlling interest in a trading company without prior regulatory agency approval. No bank would be permitted to invest more than 5 percent of its capital and surplus in the stock of a trading company. The aggregate amount of loans and investments by a bank in a trading company would be limited to 10 percent of the

Bank's capital funds, and no group of banks could acquire more than 50 percent of a trading company, of its equity, without the prior approval of the appropriate regulatory agency.

This legislation establishes numerous other restrictions on bank participation. The name of the trading company cannot be similar in any respect to that of the banking investor.

When we last met, numerous amendments adopted by the Senate to further restrict participation of banks. The trading companies in which they do participate, for example, would clearly be prohibited from engaging in nontrading activities. These restrictions are numerous and they have been carefully developed, in cooperation with the regulatory agencies, in order to facilitate the creation of the trading companies without impairing or running any risk of impairing the condition of the banks.

We have to oppose this amendment because it effectively prevents banks from having a controlling interest in trading companies. Without those controlling interest banks will be discouraged from participating. And without the bank's participation, you will not have many trading companies.

What is more important, the position of the banks themselves is in danger, as the Comptroller of the Currency has recognized, by this amendment. First of all, it confines participation by banks through controlling interests in trading companies to bank holding companies. That means that only the largest banks, those with holding companies, can participate in trading companies through controlling interests in the trading companies. It discriminates against the small banks.

By confining participation to the bank holding companies, it also transfers all control over such participation to one regulatory agency; that is to say, the Federal Reserve Board. That is the agency which is least enthusiastic about bank participation in the trading companies. So it cuts out altogether the small banks and then cuts in exclusively the one agency which is most negative toward the participation by banks in trading companies.

The participation of the banks, the importance of it, is recognized in other countries and it is probably even more important in the United States, because this country, unlike others, lacks the institutions with the worldwide experience in trade with which to launch and manage successfully these companies.

The American banks have extensive national and international networks comprised of branches, subsidiaries, affiliates, representative officers, and correspondent relationships.

These networks can provide the marketing and other services abroad. They can also extend into every community and reach every business, including the small- and medium-sized firms, in the United States.

The banks can provide a wide range of export-related financing as well as ancillary services through these networks. They can assist in the identification of foreign markets. They can provide advice with respect to foreign exchange, trade documentation, transportation and warehousing, and they can do so in a way that is unique in the United States.

They can provide export trading companies and exporters the financing necessary for export transactions.

This measure also gives some symmetry to the regulatory structure for bank participation in trading companies. Foreign banks are involved in export trading companies which provide a convenient single source service for exporters abroad and facilitate exports to the United States. This measure would permit U.S. banks to participate in trading companies and provide such services for exports from the United States.

U.S. banks can participate through their foreign branches in foreign trading companies and in trade between foreign countries, but they cannot now facilitate trade from the United States.

So the participation of banks is critical, and they should not be forced into minority positions. That was the problem with the real estate investment trusts. That is where the risk arises.

The Comptroller recognizes that it is preferable from the standpoint of bank soundness and the protection of depositors to permit banks to have controlling interests and be able to control and manage their investments, instead of putting them to the risk and mercy of others.

Many banks will not participate on any other basis because they want to be prudent.

Ironically, Mr. President, this amendment would discourage the creation of trading companies by discouraging the participation of banks, and would increase the risk to banks by forcing them into minority positions in trading companies.

It has been said that this breaks with tradition. We break with tradition with some regularity. We ought to break with the past more often in order to compete more effectively with nations more pragmatic than we are. We have permitted banks to have controlling interests in Edge Act corporations. We permit them to have controlling interests in small business investment companies. Now with the competitiveness of the United States at the top of our economic agenda, I suggest we ought to permit them to participate through controlling interest in trading companies.

Ultimately, the condition of the banks depends upon the condition of the economy. It depends upon the condition of the bank depositors and their borrowers. Inflation is not healthy for banks. Recession is not healthy for banks. Neither is the combination of both.

This bill is aimed at both. It is the beginning of a structural response to the underlying causes of economic weakness in this highly competitive, very interdependent and unstable world.

If this bill is approved without debilitating amendments, it will strengthen the banks. It will do so by helping to strengthen the entire economy. It will do that while safeguarding adequately against any improvident investments by banks in trading companies.

I remind my colleagues that no such controlling interest in trading companies can, under this bill as it now stands, be acquired by banks without the approval of the appropriate regulatory agency. If there is any risk, then, under this bill, with strict standards to follow, the regulatory agencies would turn down the applications of the banks.

The PRESIDING OFFICER. Who yields time?

Mr. HEINZ. Mr. President, how much time remains to the Senator from Illinois?

The PRESIDING OFFICER. Fourteen minutes remain.

Mr. HEINZ. Will the Senator from Illinois yield me 10 minutes?

Mr. STEVENSON. Mr. President, I am happy to yield 10 minutes to the Senator.

Mr. HEINZ. Mr. President, I rise to join my colleague, Senator STEVENSON, in opposition to this amendment. I remain very deeply concerned about our Nation's export performance. While some have indicated that looking at the period 1972 through 1979 our performance has been good, the fact is that if you choose 1972 as your base year, it shows American exports in an extremely favorable but fundamentally inaccurate light. After 1972 the growth of U.S. exports trailed that of both Germany and Japan. In the 1975–79 period, U.S. export growth averaged 14 percent per year while Japan's exports grew 15.6 percent annually, and Germany's rose at 17.5 percent.

The point of that, Mr. President, is if U.S. exports had grown as fast as Germany's since 1975, our exports last year would have been $23.5 billion higher than they actually were, and that would have been an amount nearly enough to offset the entire 1979 trade deficit which, as my colleagues will recollect, rivaled our budget deficit.

Apart from lagging export growth, however, a major concern regarding U.S. exports has been the declining U.S. share of world markets. Since 1972, the U.S. share of world exports declined from 15.6 percent to 14 percent, while the share of manufactures exports has fallen from 18.4 percent to 17.4 percent. Thus, while export growth has been rapid, we have lost ground compared to other exporters.

Although the trade shares of Germany and Japan have also fallen, with the exception of Germany's manufactured shares, their declines since 1972 were not as great as ours. Moreover, their share declines coincided with a general appreciation of their currencies while the U.S. decline occurred despite a very significant depreciation of the dollar.

Had the U.S. share of world trade been maintained at the 1972 level, last year's exports would have been more than $20 billion greater than the actual figure reported.

Mr. President, I cite these statistics to emphasize once again that our trade position is not nearly good enough. It does not measure up to the needs of an international economic power with the many responsibilities we have assumed worldwide. It does not permit our economy or our currency to show the strength needed, a strength that is es-

sential if we are ever to achieve stable price levels once again in this country. Unless we are able to pay our way in the world, earning our way through exports to pay for what we import, we will continue to see our dollar erode, our international position decline, and our influence, such as it is, be further reduced and the world a lesser place for that.

Mr. President, as I said earlier, I oppose this amendment, as indeed, I expect most Members of the Senate will oppose it.

Although I cannot speak to its intent, I can speak in some detail about its effect. If adopted it would destroy this bill and with it everything we are trying to accomplish with the trading company concept.

This amendment does not represent the modest compromise which the distinguished chairman of the Banking Committee, the Senator from Wisconsin (Mr. PROXMIRE) has suggested. In fact, such a compromise has already been made—in the Banking Committee between the bill introduced by Senator STEVENSON and myself, S. 2379, and the views of the Federal Reserve Board. At that time, we added a number of additional protections the Fed had suggested, such as the prohibition on commodities speculation, the explicit ban on preferential loans, the dollar limit—in addition to the percentage limits—on bank investment without approval, and the requirement that the trading company avoid identification with a bank, by manitaining a different name, for example.

In addition to those protections, we further compromised with the Federal Reserve Board on the floor last week by adding an amendment that limits trading company activities to activities related to international trade, and which further prohibits them from involvement in the securities business or manufacturing or agricultural production if the trading company has a bank investment.

In fact, we compromised with the Fed on all but one of its proposals—the prohibition on a bank obtaining a controlling interest in a trading company. On that point we could not give in, just as we cannot now give in to an amendment that effectively does the same thing.

I go into this detail, Mr. President, to make clear that the sponsors of this bill have tried their best to accommodate the concerns of the Chairman of the Federal Reserve Board, and that we have done so with respect to all but one point. To suggest that the pending amendment is a compromise is to ignore this history. The compromise is already made and included in the bill. The Senator from Wisconsin, in fact, is talking about surrender, not compromise.

Now, Mr. President, let me examine the amendment before us in greater detail to explain why it will kill this bill. The amendment actually differs from the bill in only two significant respects. The rest of it contains protections that are already a part of the bill, as I noted above.

First, the amendment limits the right to even apply for a controlling interest in a trading company to bank holding companies. This means banks would not even be able to apply for control, which will be a serious limitation on the activities of the 10,000 smaller banks which are not now in holding companies. Ironically, this limitation would particularly discriminate against small- and medium-sized banks outside large commercial centers—the very institutions whose involvement is so critical if we are to involve small- and medium-sized businesses in exporting. It is this involvement of new firms, small firms, in the export business that is the central purpose of this bill. Adoption of the amendment would knock out the very people we are most trying to reach.

The second difference is the set of standards the amendment provides would have to be met before the Fed could approve an application to take control of a trading company, standards which, in my judgment, could not be met under almost any circumstances.

The amendment is apparently intended to permit control in a particular case Chairman Volcker referred to in his letters of July 23 and August 5 to Senator STEVENSON:

> The situation where a trading company with bank control is needed for a particular large and sophisticated project which would probably not be undertaken without bank involvement. This is a legitimate purpose for a trading company, though certainly not the only one.

But the restrictions in this amendment go far beyond Chairman Volcker's intent and would hardly even permit the establishment of such a single-purpose trading company.

Before the Fed could approve an application, the applicant would have to spell out precisely what goods or services it proposed to export; demonstrate that those goods or services would not be exported to any significant extent without a trading company, and prove that they would be unlikely to be exported without bank control of a trading company.

In my judgment, these findings, which must be clear and on the basis of the record, are practically impossible to make, and the result will be either no applications for control or no approvals.

The proponents of this amendment, Mr. President, seem to be under the impression that exporting is an easy, high-profit business, and that banks are clamoring to get into it. Unfortunately, that is not the case. If it were, we would probably have no need for this legislation. In the real world, however, it is a complicated, often marginal, business that banks, with their usual caution, are hesitant to get involved in. The whole point of this legislation is to create a climate where banks and smaller businesses will be willing to get into exporting. We are trying to tip the balance in favor of export trade, not add on even more restrictions and redtape than exist now, as the proposed amendment would do.

In trying to tip the balance, however, we are hardly creating an unacceptable risk for banks. In addition to the points I detailed earlier, the bill already contains statutory limits of 5 percent of a bank's capital that could be invested in a trading company and 10 percent that could be invested or loaned to a trading company.

In addition, any investment over $10 million or resulting in bank control must be specifically approved on a case-by-case basis by the appropriate bank regulatory agency; the Federal Reserve Board, the Federal Deposit Insurance Corporation, or the Comptroller of the Currency. In granting such approval, the agency further has the discretion to impose additional restrictions, such as a leverage ratio, to minimize any perceived risk even further.

It seems to me, Mr. President, that the bill fully protects our banking system and any specific banks that choose to involve themselves in trading companies. To add the additional restrictions imposed by this amendment would destroy the bill's basic objective—increasing exports through the creation of trading companies. Admittedly, this is a new idea, but anyone who studies the bill carefully will see that the concerns that have been expressed about it are completely unfounded. We are not creating zaibatsu.

We are not building cartels. Neither are we providing opportunities for concentration of capital in a few banks. What we are doing is opening a door so that bank resources can be tapped in a controlled and measured way to contribute to exporting. This is a modest objective and by no means all that needs to be done to enhance this Nation's export competitiveness. Our broader policy goals are contained in S. 2773, the National Export Policy Act, of which the trading companies legislation is one important part.

Another part of that bill, improved tax treatment for Americans working abroad, has already been approved by the Finance Committee and is a part of the tax bill recently reported. Still other parts have had hearings but as yet no action. S. 2718 by itself is not the entire picture, but it is the first piece of it to come before the Senate. It is important that we act decisively on this measure to make clear to all concerned the Congress commitment to a strong export policy.

Mr. President, I shall not debate at any greater length the amendment of the Senator from Wisconsin. Senator STEVENSON, I think, has done that quite eloquently. The only point I emphasize here, Mr. President, is that that banking organizations have two resources that are absolutely essential to the establishment of an export trading company.

First, banks, through their U.S. offices, are able to reach large numbers of small- and medium-sized companies who are not now exporting but who may manufacture exportable products. Through their foreign branches and correspondent relationships, banking organizations are in an excellent position to identify potential foreign markets and customers. The finance component of an export transaction is often its most crucial element. Bank participation will expand an ETC's capability to provide its customers with realistic financing options and one-stop service. And where small- and medium-sized companies are involved, there has to be effective one-stop service.

If an export trading company has the ability either to finance or arrange financing of the transaction, it does take the largest possible step toward permitting such company to offer the one-stop service that is so desirable. Thus, a bank owner, Mr. President, can provide necessary expertise, necessary resources, and make for a much more effective approach to exports.

For these and other reasons, Mr. President, I am strongly opposed to the Proxmire amendment. I feel that it would have the effect, along with the Metzenbaum amendment, of gutting the bill, leaving our export competitors laughing at our inability to move ahead.

Some people seem to think that the only countries in the world that permit banks to have some kind of ownership in their trading companies are the Japanese. That, in fact, is simply not correct. The Hong Kong & Shanghai Banking Corp., which owns a rather large American bank now, the Marine Midland Corp., owns a 33-percent controlling interest in Hutchinson-Whampoa Ltd. The Midland Bank of England, not to be confused with the Marine Midland Bank—although the Midland Bank is now actively looking to acquire a very substantial interest in the Crocker Bank of California, as I recollect—owns at least three trading companies, or controlling interests in three trading companies.

Barclay's Bank International, scarcely a Japanese bank, owns 24.5 percent of Tozer, Kemsley, and Millbourn. The French company, Credite Lyonnaise, owns 30 percent of Essor PME, and Banco do Brasil owns 100 percent of Beke Co., a trading company.

So we see a pattern worldwide. It is a pattern of the pooling of resources, including financial resources, and it is a pattern of success and a pattern that we as a Nation, that must live by our success in international trade, ignore at our peril.

For all these reasons, Mr. President, I urge my colleagues to reject the Proxmire amendment.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENSON. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. STEVENSON. Mr. President, I yield 4 minutes to the distinguished Senator from Massachusetts.

Mr. TSONGAS. I thank the Senator from Illinois.

Mr. President, since the Senator from Pennsylvania just gave my speech, I do not think I need the 4 minutes. He was so inclusive in his remarks, expressing each point remarkably well.

Mr. President, I am opposed to the Proxmire amendment. The Senator from Wisconsin knows full well the implication of his amendment. The restrictions and requirements applicants would face under this amendment would by and large preclude most banks from participating in export trading companies. When we consider our Nation's urgent need to improve its world trading position, we can ill afford to forgo the opportunities for increased trade that ETC's promise.

The United States once fancied itself an independent economic entity. OPEC, however, removed that illusion. No one need be reminded that over $90 billion will be paid to OPEC countries for oil this year. Oil price increases alone added over $16 billion to the deficit last year—the seventh deficit year of that decade. Furthermore, with gasoline prices now beginning to reflect the world's limited supply of oil, U.S. car manufacturers are losing out dramatically to foreign producers of fuel-efficient cars—particularly the Japanese. Thus, the dollar flows for oil and auto imports are at record levels.

In addition, we must recognize that Japan is not the only Asian country that competes effectively with the United States. The economies of South East Asia—including Taiwan, South Korea, Hong Kong, Singapore, and Malaysia—are all coming of age. Consider the following statistics. From 1970 to 1978, the United States recorded a modest 10 percent annual rise in national income, of which 6.6 percent was due to inflation. During that same period, Taiwan recorded annual increases of exports to the United States of a staggering 34 percent.

Such outflows of funds command our attention. We can take either of two directions. We can retrench, attempting to forestall any further intrusions into our economy by imposing high tariffs and import quotas. Or, we can embrace our new role as a world trader in a world economic community, and take steps to improve our competitive position. I believe the latter is the only real choice. We are, like it or not, an integrated part of the world economic community. We must accept this role and begin to insure that U.S. business does not compete abroad at a disadvantage.

We must maintain and expand export markets throughout the world economic community—and export trading companies can play a vital role. With their international offices and their familiarity and concern with U.S. producers, U.S. banks promise export market access to thousands of small and medium sized firms.

This is not abstract theory. We are trying to learn from our more experienced trading partners. We have found that many large trading companies are owned by banks in Europe:

Hong Kong and Shanghai Banking Corp., owns 33 percent controlling interest in Hutchinson Whampoa Ltd.

Midland Bank Ltd. owns controlling interests in three trading companies.

Barclay's Bank International owns 24.5 percent of Tozer, Kemsley and Millbourn. And the list goes on.

Senator PROXMIRE's amendment states that applicants be granted controls only—

If the applicant made a showing that such control was clearly necessary in order for the export trading company to export or facilitate the exportation of goods and services.

How can anyone expect a bank to be able to "clearly demonstrate" that without control such export activity would have been impossible? Export activity may be determined by Government regulators to be economically feasible without a bank's control of the ETC. Nonetheless, this economically feasible alternative may be unattractive to the banks.

I understand the concern of the Senator from Wisconsin regarding safeness and soundness of banks. But I am convinced that the agreement reached by the committee provides ample protection against these concerns.

While the legislation permits banks to acquire a controlling interest, banking participation is carefully limited.

Investment in ETC's is limited to 5 percent of the bank's capital and surplus.

Total bank exposure of both investments and loans is limited to 10 percent of capital and surplus.

Bank regulatory agencies must approve controlling investments of ETC voting stock, even if the interest is less than $10 million.

Bank regulatory agencies must approve acquisitions by consortia of banks for more than 50 percent of an ETC, even if individual bank investments are not equivalent to a controlling interest.

The name of an ETC may not be similar to that of a bank investor.

A bank must terminate its ownership of an ETC if the ETC takes speculative positions in commodities.

A bank is barred from making preferential loans to an ETC that it controls. This insures the availability of bank credit to competitors.

In addition, the banking regulatory agencies are given numerous powers and authorities regarding bank involvement in ETC's. These include power to deny applications where export benefits are outweighed by adverse banking factors, and conditions that limit financial exposure, possible conflicts of interest, and unsound banking practices.

With this litany of safeguards, carefully crafted over months of negotiations, we have gone as far as possible without threatening the goal of this legislation.

Mr. President, I have the deepest respect for my colleague from Wisconsin. I know he offered this amendment in good faith. But I believe its adoption would be a grevous error.

Mr. President, I only add one thought. And that is that I recognize that the amendment before us has a certain appeal. Having served on the Banking Committee, I am familiar with the chairman's efforts to safeguard both the consumer and the banking system from excesses. I think that record is well acknowledged.

The question before us today is really a question of risk.

In particular, given our situation internationally, given the need to compete, the need to export and to keep a sound dollar, can we afford to reject procedures, policies and practices that potentially can make us competitors in world trade markets? I think not. I believe that, for many small companies that America needs as exporters, this bill is necessary. Moreover, if we take out the potential for the banks to participate meaningfully, they will not participate at all. Once we have done that, we can write

off the bill in its entirety. There are a host of companies that need the expertise that this bill promises. We therefore must reject the Proxmire amendment.

One final point: There was some discussion before the break as to the position of small business on this bill. Let me emphasize that the National Small Business Association has endorsed the bill. That is consistent with what I have been told by the many small businesses which have export potential in Massachusetts.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, I yield myself such time as I may require and I shall take very few minutes.

In the first place, Mr. President, I think we all ought to recognize that it is desirable for us to increase exports, and I think this bill does and Senator STEVENSON and Senator HEINZ deserve great credit for presenting the bill. Without their persistence, the bill would not be before us. I think it is good that it is, it is a good bill, though I think it can be improved a whole lot by the amendment I offer.

Nevertheless, we should not lose sight of the fact that this country is not in an export-import imbalance. The fact is that our balance on current account will be in surplus this year.

What is the current account? What the current account does is take our merchandise balance—the balance between exports and imports—and correct it for the effect of the investment we receive from abroad and the investment we pay out to foreigners. If we include that, which is all the payments made, we have a balance. We have a balance. We cannot do much better than that. We have a surplus, as a matter of fact. If we run too big a surplus, of course, then we create an unfortunate situation.

The Chase Manhattan Bank pointed this out very well in a newsletter only a few days ago, saying that those who say we have a disgrace on our hands because of the loss of exports on our part, because we have not exported enough, overlook the fact that the real figure that counts is the current account balance that takes in all of the payments—including our foreign aid, including our investment income, including our exports, our imports, and so forth—and on that, we are in surplus.

Mr. President, let me also point out that the fact is, as I said the other day, that since 1972, exports in this country have increased more rapidly than they have in Germany, more rapidly than they have in Japan, have increased twice as rapidly as our gross national product. We can do better. World trade is increasing and that is a fine thing for peace in the world and for the higher standards of living here and abroad. But, Mr. President, we should not, because of our feeling of crisis, forget about our antitrust laws.

We certainly should not forget about the traditional posture we have taken with respect to our banks, not having our banks get into commerce and compete unfairly with those competitors who do not have a bank owning them and, therefore, do not have access to credit.

Mr. President, let me conclude by pointing out what the Federal Reserve amendment which I am offering here would do.

It would permit banks to own, and bank holding companies to own, up to 20 percent noncontrolling interest in an export trading company. In addition to that, the amendment would permit bank holding companies to control or own up to 100 percent of an export trading company upon prior approval of the Federal Reserve, upon showing in an application that the export trading company's activities will be limited to goods and services which would not be exported without involvement of an export trading company.

What we are saying is "go ahead," but let the Federal Reserve, which has the greater expertise in this area, they know the banks, and I think we all acknowledge their competence to make an objective judgment in this respect, they are very interested in a healthy international financial system, let them decide whether ownership control by a bank or an export trading company is necessary to increase exports.

If it is, they say "yes." If it is not, they would deny it.

It seems to me this provides the strength that the bill would provide for our exports, help permit our exports, but would do so in a prudent way.

If the managers of the bill are ready to yield back their time, I am ready to yield back my time.

Mr. STEVENSON. Mr. President, I am prepared to yield back the remainder of my time.

Mr. PROXMIRE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Wisconsin.

So the amendment (No. 2276) was rejected.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. STEVENSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DANFORTH. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending order is for the Senator from Ohio (Mr. METZENBAUM) to call up an amendment.

Mr. DANFORTH. Mr. President, it is my understanding that the Senator from Ohio does not intend to call up his amendment. However, I am not certain that is the case.

Mr. PROXMIRE. If the Senator will yield, that is my understanding. I discussed it with the staff of the Senator from Ohio and understand he will not call up his amendment.

Mr. DANFORTH. Mr. President, I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, it is my understanding that Senator METZENBAUM does not intend to call up his amendment, which is directed to the antitrust title of this bill. I was prepared to debate the amendment with him. Of course, now, there is no amendment to debate.

I think the case against the Metzenbaum amendment is very well made by a letter from the Secretary of Commerce, Mr. Klutznick, dated August 26, 1980, together with an excerpt from a memorandum from Secretary Klutznick to Members of the Senate.

Mr. President, because this matter might come up in the House, I ask unanimous consent that the letter from Secretary Klutznick, together with the memorandum, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF COMMERCE,
Washington, D.C., August 26, 1980.

HON. JOHN C. DANFORTH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DANFORTH: I want to convey my strong opposition to the Proxmire-Kennedy-Metzenbaum amendments. The Administration has consistently supported both Titles I and II of S. 2718 and opposes the proposed amendments which could severely undermine both major portions of this bill and the underlying objective of enhancing U.S. exports.

The amendment directed at bank participation could effectively discourage a number of banks from attempting to become involved in export trading companies. I consider such bank participation an important element in the successful development of export trading companies in the United States. I believe there are strong reasons why banks should be given the option to control and manage those export trading companies which they might join. S. 2718's carefully constructed safeguards provide the necessary flexibility for the Federal supervisory agencies to control investments by banking organizations in export trading companies. Additional statutory restrictions are not needed.

The changes in the Webb-Pomerene antitrust portions of the bill are not at all necessary for the effective enforcement of our antitrust principles and would undermine the balance carefully worked out in S. 2718. The Justice Department maintains a major role in the revised certification process, and has the ability to take necessary further action against any proposals or activities it deems improper.

I urge your strong support for S. 2718 as carefully developed by Senators Stevenson, Danforth and Heinz and your opposition to these or any other crippling amendments.

Sincerely,

PHILIP W. KLUTZNICK,
Secretary of Commerce.

EXCERPT FROM MEMORANDUM FROM SECRETARY OF COMMERCE KLUTZNICK TO MEMBERS OF SENATE

II. Antitrust (Senators Proxmire, Kennedy, Church, and Metzenbaum):

The Administration *strongly supports* the antitrust provisions of S. 2718. The procedures have been carefully drafted to balance the needs of both export development and protection against restraint of trade. The Department of Justice is in full agreement with the certification system provided in S. 2718 (with certain technical amendments that are to be proposed on the Senate Floor). See attached copy of the Attorney General's letter of June 23.

The Administration opposes the proposed amendment.

The fundamental purpose of creating an

antitrust certification procedure is to encourage exports by assuring businesses that certain joint export activities will not give rise to antitrust liability. The certification process involves determination of a specified need for joint export activities, as well as whether substantial anticompetitive results in the U.S. would arise from these activities. As with most other antitrust exemptions, it is most appropriate to place basic authority for such determinations with an agency whose expertise lies in the area for which the exemption is created—in this case the export development expertise of the Commerce Department. The law enforcement orientation of the Justice Department and the Federal Trade Commission makes their most appropriate role one of consultation and advice, rather than the co-administrator's role proposed in the amendment. As a matter of administrative practice, the amendment unwisely derogates from the responsibility and effectiveness of all three agencies by making not one of them finally responsible for administration of the law.

As a practical matter, giving those charged with vigorous enforcement of the antitrust laws a simple veto over applications for the export exemption certificate would discourage plans for export associations and trading companies.

Rightly or wrongly, many businesses would conclude that the expense and time of an application were not worth the possibility of a simple veto by agencies with understandable skepticism towards any antitrust exemptions.

S. 2718 nevertheless insures against anticompetitive results within the United States both through its prescription of rigorous standards against which the Secretary of Commerce must judge application and the opportunity for decertification actions by Justice and the FTC in appropriate instances.

The problem created is enhanced because the only remedy for the veto of a certificate by Justice would be a costly court action. This would severely deter the small and medium companies that are the intended beneficiaries of this law from challenging any arbitrary or capricious decisions.

Mr. HEINZ. Mr. President, I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, my colleague from Missouri has stated some of his interests and concerns regarding the amendment that the Senator from Ohio (Mr. METZENBAUM) might offer.

I have some background to the whole issue involved with S. 2718 regarding the antitrust portions that I would like to add briefly.

Mr. President, I appreciate the statement from the Senator from Wisconsin (Mr. PROXMIRE) that Senator METZENBAUM will not offer his amendment. It is my feeling that were the Senate to adopt the amendment of the Senator from Ohio, it would be a serious mistake and would do great damage to the bill.

Mr. President, this title of the bill is the product of extensive and prolonged negotiations between Senator DANFORTH and the Justice Department. Those negotiations have lasted more than a year and are detailed in a letter the Senator from Missouri sent me shortly before the Banking Committee marked up S. 2718 last May. I ask unanimous consent that the text of that letter with the accompanying correspondence be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., May 9, 1980.

Hon. JOHN HEINZ,
U.S. Senate,
Washington, D.C.

DEAR JOHN: A year ago, along with other cosponsors, we introduced S. 864, the "Export Trade Association Act." The legislation proposed amendments to the 1918 Webb-Pomerene Act which were intended to encourage more American firms to market their goods and services abroad and enable them to compete more aggressively with their foreign counterparts. Because the Webb-Pomerene Act provides an exemption from the antitrust laws for joint exporting activities and S. 864 proposes substantial amendments to that Act, I have attempted to work with the Antitrust Division of the Department of Justice in structuring those amendments.

The reason for this letter is to outline for you the extensive negotiations and agreements reached between myself and the Antitrust Division at the Justice Department. I have set forth below the Department of Justice's testimony on S. 864 given by Mr. Ky P. Ewing, Deputy Assistant Attorney General, Antitrust Division. The testimony was given during hearings on September 17 and 18, 1979. Mr. Ewing, in summarizing his prepared remarks, commended on five aspects of S. 864:

"First, the Department of Justice would favor the imposition of a needs test in the Webb Act. Second, we would not object to the specific addition of services to the Act's coverage. Third, while in general the Justice Department has historically been concerned when promotion and regulatory functions are combined in one entity, we don't object to a transferring of the Webb-Pomerene licensing action away from an antitrust enforcement agency provided such is coupled with a needs test and with opportunity for the Department of Justice and FTC to take part in the development of the administrative regulations to be promulgated by the Secretary of Commerce. We note that Senator Danforth's bill seems to provide a start in the right direction on that.

"Fourth, we note that S. 864. . . . would require that a restraint of U.S. domestic trade be substantial before the exemption would disappear. The purpose of this proposal, as we understand it, is to bring the Act into what we conceive to be the current state of antitrust laws interpreted by the courts. Thus we have no objection to this clarification of the legal standard even though it is perhaps redundant.

"Fifth, the Department of Justice is opposed to those portions of (S. 864) that would provide for exemption revocation proceedings to be managed by the Commerce Department and which would completely oust the Justice Department from Sherman Act enforcement during that proceeding.

"In short, we oppose the creation by (S. 864) of a novel adjudicative procedure which would add a new regulatory layer where, in our view, the legal standards to be applied are already well known and adequate remedies at law are available under the Sherman and Federal Trade Commission Acts."

(Testimony of Mr. Ewing, pp. 137–138, Hearing Record.)

Mr. Ewing's testimony specifically addresses the Antitrust Division's concerns with S. 864, as introduced. Of the five points mentioned, three of them—the addition of services to the coverage of the Webb Act, the shift of the regulatory oversight responsibility from the Federal Trade Commission to the Commerce Department, and the codification of judicial precedent into the substantive standards of the bill—were not objected to by the Antitrust Division. As to the remaining two concerns, they have been resolved after lengthy discussions and meetings between my staff and the staff at the Antitrust Division. I will explain.

After the hearings last September, my staff met with the representatives of the business community and attorneys from the Antitrust Division to draft amendments to S. 864 addressed to the concerns raised by each group during those hearings. As a result of these discussions held over a period of four months, I introduced an amendment to S. 864, Amendment #1674. Subsequent to the amendment's introduction, my staff continued to meet with officials of the Antitrust Division in order to obtain their support for the bill.

On March 17 and 18 of this year, hearings were held on Amendment #1674. These hearings were followed on April 3 with testimony from the Administration on its support for for S. 864 as amended. Immediately prior to these hearings, Mr. Kermit Almstedt from my staff, met on a number of occasions with Mr. Ewing and staff attorneys from the Antitrust Division. At these meetings Mr. Almstedt was informed that Amendment #1674 resolved most of their remaining objections with two principal exceptions. First, a needs test was still not incorporated into Amendment #1674. Secondly, the definition of "export trade activities" as proposed in the amendments was thought to be too broad if applied to trading companies (as opposed to Webb-Pomerene associations).

Prior to the April third testimony of Secretary Klutznick on behalf of the Administration, Mr. Almstedt and Mr. Ewing, with staff from the Antitrust Division, met both in person and over the phone to resolve what we were told at that time to be the only remaining obstacles to the Antitrust Division supporting S. 864. The result of these discussions was that an agreement was reached. Mr. Almstedt was informed by Mr. Ewing that Assistant Attorney General Litvack (head of the Antitrust Division) had accepted the agreement reached between them, and in turn Mr. Ewing was informed that I also accepted the agreement.

You can imagine my surprise, then, when Secretary Klutznick of the Commerce Department testified before this Committee on April 3 and indicated that the Antitrust Division had a new concern. The problem related to the question of whether the Justice Department was to play a consultation role or a participatory role during the certification process carried out by the Department of Commerce. During questioning, Mr. Klutznick admitted that the Department of Justice had changed its mind at the eleventh hour, notwithstanding the fact that this issue had never before been raised by the Antitrust Division.

It now appears, based on the attached copy of correspondence between Assistant Attorney General Litvack and Under Secretary for International Trade Bob Herzstein, that the seemingly simple issue of "consultation" v. "participation" has expanded to five areas of disagreement.

It has been my position all along that in proposing amendments to the Webb-Pomerene Act—amendments which would expand upon that law's antitrust exemption for export trade activities—that the cosponsors of the legislation should work closely with those in the Administration whose responsibility it is to enforce the antitrust laws, specifically the Antitrust Division of the Department of Justice. I directed my staff to do that and we did so in good faith. We reached an agreement. Title II to the committee print is the agreed upon language between the Antitrust Division and my office. I would hope that

the Banking Committee would act upon that agreement and pass it out.

Thank you for your consideration.

Sincerely,

JOHN C. DANFORTH.

Enclosure.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., April 29, 1980.

Hon. ROBERT E. HERZSTEIN,
Under Secretary for International Trade, Department of Commerce, Washington, D.C.

DEAR BOB: Attached is suggested language for inclusion in pending export trade association legislation (the Danforth bill) to define the role of the Attorney General and the Federal Trade Commission in connection with the certification of export trade associations by the Secretary of Commerce. The language would be incorporated in new section 4(b)(1) of the Act, which appears on pp. 9–10 of the attached working draft of the bill. (This draft also reflects many other changes previously discussed with Senator Danforth's staff.) For your convenience, we have reconstructed the key subsection in a clean draft. Additional changes in various other sections of the bill are also required to conform those sections to the scheme of section 4(b)(1), and to delay the antitrust exemption for 30 days if the Attorney General or the FTC disagrees with the certification. These changes, also reflected on the attached working draft, appear on page 6 (line 21); page 7 (between lines 5 and 6 and line 24); page 10 (line 11); page 11 (line 7); page 12 (line 11, lines 15–19 and the last sentence of the language to be inserted on line 22); page 14 (line 5); and page 15 (lines 14–18 and 21–25).

We have also set forth changes in new section 2(a) of the Act (pp. 5–6 of the working draft), in line with our earlier discussions.

Sincerely yours,

SANFORD M. LITVACK,
Assistant Attorney General, Antitrust Division.

Attachment.

U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., May 1, 1980.

Mr. SANFORD M. LITVACK,
Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Washington, D.C.

DEAR SANDY: We have made several changes to the language for the export trade association legislation that you sent over yesterday. Our modifications are fully consistent with agreements reached during discussions between Secretary Klutznick, Ambassador Askew, and the Attorney General.

(1) FTC involvement. We have no problems with the FTC playing a role similar to that contemplated for the Justice Department. However, we do not feel that the Department of Commerce should have to deal with two separate enforcement agencies in any particular case. As in all other antitrust matters, your preclearance procedures with the FTC could ensure that only one agency pursued a particular certification matter. We would like this point enunciated in the legislation so that we will not be required to wait the full forty-five day period for comments from the non-involved agency. We are receptive to your suggestions on how this point should be made clear.

(2) Thirty-day notice before filing an action for invalidation. You have proposed deleting the requirement on page 12 of the draft bill that the Attorney General or Commission provide a thirty-day notice to an association before bringing an action to invalidate the certification. Your suggested change goes beyond what is necessary to express our recent agreements and makes a harmful change in the basic Danforth Bill format. The thirty-day notice requirement is inappropriate for the immediate post-certification challenge provided for in our proposed procedure, because the period for challenge is only thirty days. However, the thirty-day notice requirement remains appropriate in other cases. We propose to amend the sentence as follows:

"Except in the case of an action brought during the period provided for in section 2(b)(2), the Attorney General or Commission shall notify any association, or applicable member . . ."

(3) Preliminary relief. We see no need for the sentence you have added on page 12 specifying that the court may grant a temporary restraining order. Nothing in the bill detracts from your opportunity to seek preliminary relief under normal judicial standards. There should not be any language suggesting that preliminary relief has special application to these cases. If you insist on including a statement on preliminary relief, we propose the following:

"Normal judicial standards shall apply to any request for preliminary relief during the pendency of such an action."

(4) Simultaneous filings with Justice and FTC. On pages 7, 11, 14, and 15 of the draft bill you propose to require that all applications and reports be filed with the Justice Department and the FTC simultaneously with their filing at the Department of Commerce. You also seek to change the provision on confidential information. These are new proposals not previously requested or discussed. We cannot insert them into the decision-making process at this late stage. Furthermore, requiring joint filings undermines the very nature of the agreement between our two agencies on the certification procedure. The Commerce Department will operate the certification procedure with the advice of the antitrust enforcement agencies. But the Commerce Department will be playing a distinct and important role in encouraging and assisting businesses to understand the opportunities available to trade associations and, where appropriate, to form such associations. Requiring simultaneous filings with the antitrust enforcement agencies will significantly affect the public perception of the procedure and will lead the public erroneously to conclude that the certification process is jointly operated. We will, of course, provide the appropriate enforcement agency with copies of the application in ample time for consideration and comment. These and other details can surely be worked out in a cooperative fashion between us once the process is in operation.

(5) Standards for eligibility. You propose to change the standards in sections 2(a)(2) and 2(a)(3) of the bill. You mentioned this issue to me the day before the subcommittee hearing. At that time I replied that we would consider such a change. However, I did not then know that the present language had been agreed upon in lengthy discussions between your staff and that of Senator Danforth. I understand that such changes would be unacceptable to the Senator. I was also unaware that the Antitrust Division had testified on this very language on September 18, 1979, in a hearing before this same International Finance Subcommittee. At that time, Mr. Ewing commented on the standards for certification:

". . . we note both S. 864 and S. 1449 would require that a restraint of U.S. domestic trade be substantial before the exemption would disappear. The purpose of this proposal, as we understand it, is to bring the act into what we conceive to be the current state of antitrust laws interpreted by the courts. Thus we have no objection to this clarification of the legal standard even though it's perhaps redundant."

Finally, I would point out that if circumstances do eventually result in a "substantial lessening of competition," even if there was no such effect initially, you would be free to seek decertification. Accordingly, we cannot accept these proposed changes.

Secretary Klutznick, Ambassador Askew, and the Attorney General have agreed upon a reasonable and desirable Administration position on the certification process. With mark-up of the bill fast approaching, we simply cannot afford to have new issues raised, particularly on proposed language that has been under consideration for six months or more. The positions enunciated in this letter are fully consistent with the agreement of the three Cabinet officers, and we feel it is necessary to advance them as the Administration position without further delay.

Sincerely,

ROBERT E. HERZSTEIN,
Under Secretary for International Trade.

Mr. HEINZ. Mr. President, this correspondence, Mr. President, reveals not only the details of the discussions between Senator DANFORTH and the Justice Department but also provides some insight into the difficulty of obtaining the agreement with the administration that was finally reached shortly before the bill was reported.

The result of those negotiations was a compromise which involved a number of changes in S. 864, which was Senator DANFORTH's original proposal. The Banking Committee adopted the compromise. The administration supports the compromise, as is evidenced by letter every Senator has received from Secretary Klutznick and Ambassador Askew. In addition, on June 23 the Attorney General, Mr. Civiletti, wrote a detailed letter to the chairman of the House Foreign Affairs Committee expressing concern about several changes the House counterpart bill had made in the carefully constructed compromise and expressing his support for the antitrust provisions of S. 2718, the bill before us now. The Attorney General concluded his letter as follows:

I ask that you and the Committee on Foreign Affairs accept S. 2718 as the model for your consideration of the important export trading legislation now before you.

As with any compromise, Mr. President, both sides gave some ground and both sides probably believe the result is less than perfect from their respective points of view. It does not surprise me if some people in the Antitrust Division of the Justice Department would like to do this a different way. I have no doubts either that Senator DANFORTH would like to do it a different way as well. The point is, Mr. President, we have a compromise, arrived at in good faith, and it is the responsibility of the managers of the bill to defend this compromise, since any substantive change in it would cause the administration to withdraw its support and thereby probably kill the bill.

As is the case with the previous amendment, however, this one, if offered and adopted, would also kill the bill—both practically by destroying our hard-won compromise, and substantively by creating a certification system that will never produce any certifications.

Senator DANFORTH has explained the substantive problems in some detail. Let me simply point out that once again we have a "killer" amendment in terms of its effect. I am pleased that the Senator from Ohio has decided not to offer the

amendment, but I did want to make clear on the record the reasons why I would have opposed it had it been offered.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the part of the order for the Metzenbaum amendment be vitiated.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Michigan.

Mr. HEINZ. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HEINZ. If the Senator from Ohio does not call up his amendment at this time, does his right to call it up *continue to exist or does he lose his right?*

The PRESIDING OFFICER. The right to call up his amendment has been vitiated by unanimous consent.

Mr. HEINZ. I thank the Chair.

UP AMENDMENT NO. 1543

(Purpose: To assist export expansion)

Mr. RIEGLE. Mr. President, I call up my amendment, which is pending.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Michigan (Mr. RIEGLE) proposes an unprinted amendment numbered 1543.

Mr. RIEGLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 20, between lines 12 and 13, insert the following:

SEC. 132. (a) The Secretary is authorized to make grants to subsidize the employment of export managers by small business manufacturing firms which have not previously been exporters in substantial amounts. The amount of such a grant may not exceed the lesser of (1) 50 per centum of the salary and other expenses related to the employment of a full-time export manager for a period of one year, or (2) $40,000.

(b) To be eligible under this section, each firm must submit to the Secretary an application which—

(1) demonstrates that the firm has not derived more than an average of 5 per centum of its sales volume (in monetary terms) from exports during the 5 most recent years and does not currently employ an export manager;

(2) demonstrates that the firm is a small business manufacturing firm, as defined by the Secretary after consulting with the Administrator of the Small Business Administration;

(3) describes the qualifications of a person proposed to be hired as the firm's export manager on a full-time basis for a period of at least one year, and describes the terms and conditions of that person's employment by the firm and the amount of the grant applied for to subsidize the costs of that employment; and

(4) describes the products and services considered by the firm to be suitable for export and the general outlines of the export program to be undertaken under the direction of the export manager.

(c) In selecting firms to receive grants under this section, the Secretary shall consider the desirability of determining the feasibility of this approach to export promotion in each of the regions of the Department of Commerce and in relation to a variety of products and services which, in the opinion of the Secretary, have export potential.

(d) There are authorized to be appropriated to the Secretary not to exceed $2,000,000 for each of the fiscal year 1981, 1982, and 1983, to carry out the program established by this section.

(e) The Secretary shall develop a plan to evaluate the cost-effectiveness of the program of export promotion established by this section and its effectiveness as compared with other export promotion programs, including the amount of export sales generated by small businesses assisted under this section. For the purpose of the evaluation the Secretary is authorized to require any firm receiving assistance under this section to furnish such information as is deemed appropriate to complete the required evaluation. The Secretary shall make recommendations concerning continuation or expansion of the program and improvements in the program structure. Such evaluation and recommendations shall be submitted to the Congress prior to October 1, 1982.

Mr. RIEGLE. Mr. President, this amendment, which I understand is acceptable to the bill's floor leaders on both sides of the aisle, will establish a pilot program of grants to small business manufacturing firms to help them absorb the first year costs of hiring a full-time export manager. Firms which are new to exporting and do not already have an export manager will be eligible to compete for grants of 50 percent of the export manager's salary and expenses or a maximum of $40,000. By new to exporting I mean that the firm has not previously exported more than 5 percent of its sales volume. The program will be funded at a level which will support 50 to 100 such grants each year for 3 years at a cost of $2 million per year.

The thought is that this would be a 3-year pilot program to enable small companies that have high potential for export, want to get in that business, to be able to hire a professional export manager. The grant would cover half the cost. Before the end of the 3-year period of time, the Commerce Department would review the results of grants made under this program to see whether they had really had the effect of substantially increasing the export business of those firms which were successful in this competition.

The program would be administered by the Secretary of Commerce, who would be required to report on the cost effectiveness of this approach at the end of the second year of the operation of the program.

Mr. President, we are living in a new international economic environment and we are not adjusting to it. The OECD estimates that the U.S. balance of trade deficit will reach $37 billion in 1980. We are not expanding our exports fast enough to pay for the increased imports brought about in part by oil price rises and in part by the greater economic strength and competitiveness of many of our trading partners. We simply cannot delay getting started on a much more aggressive effort at export expansion.

A major opportunity for export expansion lies in the 18,000 small businesses the Department of Commerce estimates could be exporting but are not. These firms are not selling abroad despite the fact that their products are competitive because it is difficult for smaller firms to gain the information and expertise and, generally, take the risks necessary to get started at exporting.

This amendment will enable us to test an approach which the Dutch Government is already using to promote exports by small firms. I believe it is an extremely promising approach because it is a front-end, one-time subsidy and because it is a direct attack on the problem.

A front-end subsidy is appropriate in this case because most of the impediments to small business exporting need one-time, front-end solutions. Once a firm has developed information about overseas markets, learned how to deal with such processes as international shipping and customs valuations, adapted to the unfamiliar business practices of foreign countries, and completed its first major export transaction, most of the barriers which kept that firm away from international trade will be down.

A direct subsidy is appropriate because it is likely to get results. A firm which accepts an export-manager grant will have made a commitment amounting to half the manager's salary and expenses for 1 year. It will have someone right there in the firm whose job it is to aggressively seek export business and whose job continuation depends on that particular firm's success. I think that firm is highly likely to begin to export.

There are other promising approaches to small business export promotion besides export-manager grants. Facilitating the establishment and operation of export trading companies is an important approach and one that has my enthusiastic backing. We should also be experimenting with intensive technical assistance programs for small business exporters. We need to test and carefully evaluate all these approaches to find out which are most effective for different types of potential exporters. We simply do not have the luxury of waiting while our balance of trade gets worse each year.

Mr. President, I hope that we can discuss this amendment and accept it at this time.

Mr. STEVENSON. Mr. President, the Senator from Michigan has been very active in the effort to develop an export policy for the United States. He has given a great deal of careful thought and attention to the subject, including this amendment; and I gather that there has been some successful experience in other countries with a program such as he proposes for this country.

We have not held hearings on this proposal; but before we get to conference, there should be an opportunity to do so—at least in the other body. Because it sounds like a sensible proposal and there will be that opportunity to give it further thought before we next consider it, presumably in conference with the other body, I am willing to accept it and take it to conference.

I yield to the Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I accept

the amendment on the same basis as does Senator STEVENSON.

The PRESIDING OFFICER. Is all time yielded back?

Mr. RIEGLE. Mr. President, before doing so, I should like to add one other comment, and that is that there has been experience abroad in this regard. This approach is designed to enable high potential small business firms that could move into the export business to have the opportunity to do so.

I yield back the remainder of my time.

Mr. STEVENSON. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. BAUCUS). All time having been yielded back, the question is on agreeing to the amendment.

The amendment (UP No. 1543) was agreed to.

Mr. RIEGLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STEVENSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RIEGLE. I thank the chairman and the ranking minority member for their support and leadership on this issue.

Mr. STEVENSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2286

(Purpose: To strike the separate Economic Development Administration and Small Business Administration authorization for export trading company financing)

Mr. HELMS. Mr. President, I call up amendment No. 2286 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 2286.

Mr. HELMS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 19, line 2, strike out "(a)".

On page 19, strike out lines 13 through 18.

Mr. TSONGAS. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. TSONGAS. Mr. President, I wish to make a parliamentary inquiry as to this amendment. Does the Senator prefer that I do it now or after he speaks?

Mr. HELMS. Whatever the Senator's pleasure may be. I have a short statement. If he wishes to do it after I make my statement, that will be fine, or if he prefers to do it now, that will be fine.

Mr. TSONGAS. Go ahead.

Mr. HELMS. I thank the Senator.

Mr. President, this amendment trims the authorization in this bill relating to assistance given to export trading companies by the Small Business Administration and the Economic Development Administration.

As Senators know, this bill authorizes $20 million per year for 5 years.

Mr. President, this amendment would cut this authorization for three reasons, all of which are valid in the judgment of the Senator from North Carolina.

First. The bill already contains a specific directive to EDA and SBA to "give special weight to export-related benefits, including opening new markets for U.S. goods and services abroad and encouraging the involvement of small- or medium-size businesses or agricultural concerns in the export market."

Mr. President, this amendment does not—I repeat—does not affect this provision.

Second. The Economic Development Administration and the Small Business Administration together have authority to expend approximately $6.4 billion in loans and administration next year.

I wonder if anyone will seriously contend that somewhere in that vast sum, $6.4 billion, there cannot be found sufficient funds to assist export trading companies?

Third. There is reasonable doubt as to whether EDA and SBA assistance will be needed or wanted by the new trading companies. Let us, parenthetically, remember that this bill is going to enable concentrations of American capital to compete with Mitsbisht and the like. If such competition can be mounted it will be by the private sector, and not through federally subsidized loans with their red-tape, strings, and time delays.

Mr. President, the logical question that my amendment raises is this: "Well, if Congress is not going to give $20 million more to EDA and SBA, where are you going to cut within those agencies' programs to make room for new export trading company loans?"

In other words, I am sure some Senators may raise the question, Whose ox are you going to gore?

The answer is this:

In the allocation of capital I have never known any government official to be a perfect judge. All the agencies can do is weigh the variables before them and act within the guidelines that restrict their action. In this case, it is my contention that SBA and EDA should follow the directive by Congress to give consideration to export trading company loans just as they would give consideration to a loan's number of other kinds of loans. They are, of course, also guided by the Appropriations Committee, by the Office of Management and Budget, and by the regulations within the given agency.

So, Mr. President, if I may use that old cliche of "the bottom line," the bottom line is this: Somewhere within that enormous $6.4 billion authorized for export trading companies if—and there are a few million dollars lying around somewhere that could be used for export trading companies if—and this is the big "if,"—the trading companies can come up with meritorious applications.

One final point concerning the use of congressional directives to make available Federal funding for export trading companies, and that point is this:

In the very next section of the bill, the Export-Import Bank is directed to set up a guarantee program for the new companies but makes no specific authorization to increase Export-Import loan guarantee authority.

Mr. PROXMIRE. Mr. President, will the Senator yield briefly?

Mr. HELMS. I am delighted to yield to my friend.

Mr. PROXMIRE. Mr. President, I commend the distinguished Senator from North Carolina. He is on exactly the right track. We should be very conscious of spending more of the public's money, particularly in a situation as that where the case is so weak. As the Senator from North Carolina I understand pointed out, the present budget is adequate and the SBA and EDA have very large sums. They do not need an additional $20 million a year for 5 years or a total of $100 million.

Furthermore, as he also argued, and I think this is absolutely right, the capital should come from the private sector.

Mr. HELMS. That is right.

Mr. PROXMIRE. They can then make a judgment based on whether or not they believe that this is a viable competitive company that can effectively sell abroad.

I wish to tell the Senator something that may surprise, shock, and even disappoint him. I do not know but I think he is fighting shoulder to shoulder with the administration on this, and it is refreshing to see HELMS and Carter fighting together, on the same side I should say, because on this point the administration did oppose the EDA provision. I think that wherever we get the support, we should be grateful for it. But I am delighted to support my good friend from North Carolina who I think is on the right track here and is offering an amendment that will save the taxpayers $100 million, and God bless him.

Mr. HELMS. I thank the Senator for his comments. He is right on track. I might say to him it is a pleasure to stand with any President when that President is right, and in this case President Carter is right.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, may I address the chairman for time? May I inquire, is there any time remaining on the bill?

The PRESIDING OFFICER. On the amendment there are 15 minutes remaining to the Senator from [illegible] and 8 minutes remaining to the Senator from North Carolina.

Mr. STEVENSON. Mr. President, there is no time remaining on the bill.

The PRESIDING OFFICER. There is no time remaining on the bill.

Mr. STEVENSON. Mr. President, I am happy to yield 2 minutes to the distinguished Senator from Mississippi.

Mr. STENNIS. Mr. President, I thank the Senator very much.

I do not want to discuss the pending amendment at this time, but I do want to say a few words, Mr. President, on the bill itself.

This is an important bill, Mr. President. It impresses me very much. It is not just another quick-fix or an effort to stick a band-aid on top of a problem. This is an innovation and a new approach designed to stimulate and increase our exports. If it is handled correctly, as I see it, it will fill a void which confronts us with reference to world trade, world competition, and our exports and imports.

We frequently hear debates on tax bills and on various other problems in this Chamber. There is an outstanding deficiency sometimes, as I see it, in that we do not always give full consideration to our imports and exports and to our balance of trade and balance of payments. This bill is an effort to correct the deficiencies in these areas.

In addition, we have not given the small and medium sized businesses and industries—and often they are highly competitive—the incentives and assistance they need to export their products efficiently and effectively. We have not given them enough inducement; we have not given them enough opportunity and encouragement within our trade policies.

It seems to me that this bill is a fine start, and I commend the Senators who worked on this bill, including, of course, the Senator from Illinois, and the Senator from Pennsylvania who has also been active. I hope that this legislation will be a first step toward solving our export and international trade problems.

As one who has to deal over and over with our military problems and the things that go to make them up, I see a light of hope here. Amendments may be required. It will require efficient and aggressive administration. But I believe it is a step in the right direction, and I think we should pass the bill and then follow it up with other action which may be necessary.

I again thank the Senator from Illinois.

Mr. STEVENSON. Mr. President, I thank the distinguished Senator from Mississippi for those kind and wise words.

Returning now to the Helms amendment, the bill, I remind my friends, is an authorization. The $20 million for EDA and SBA will still have to be appropriated.

I am a little reluctant to rely on a regular authorization for EDA because there is no such authorization. The Senator will remember it has been hung up in conference for a long time now, and there is no assurance that there is going to be a regular authorization for EDA. In any event, the final amount will require action in the usual course by the appropriations committees. The appropriations that would be authorized by the bill would support only loans and guarantees, not grants, and since the export trading companies are expected to be profitable, the loans will be repaid. So there is no likelihood, in fact I do not think there is any possibility, of any out-of-pocket expenditure by the taxpayers on behalf of the trading companies.

On the contrary, since the trading companies are going to represent all American industry and agriculture, small businesses, middle-sized businesses as well as large-sized businesses, in all the markets of the world, there is a strong probability that the effect of the legislation is going to be to increase revenues, not decrease revenues. That is the purpose of the bill, to strengthen American industry and, indirectly, to strengthen the Government with increased revenues.

This provision is in here to help these companies get off the ground. It is not intended to be a permanent authorization. It is intended to authorize appropriations for the startup costs of trading companies. These are new to the United States, and because they are new they could anticipate, we can anticipate, some difficulty in getting these companies off the ground and running. That is the reason for the EDA and the SBA support. It is to get them started.

Once started, they will not need any continuing support. If they do not need it during the startup period, the financing by these agencies, of course, would not have to be made available to the infant trading companies. Over the long run, this should mean more profit for American industry and agriculture, a stronger balance of trade, and also more revenues for the Federal Government.

Mr. HEINZ. Mr. President, will the Senator yield?

Mr. STEVENSON. I do yield to my friend from Pennsylvania.

Mr. HEINZ. Mr. President, I rise in opposition to the amendment, and I want to say to my good friend and colleague from North Carolina that this provision is in this bill for good reasons, some of which have been described by our colleague from Illinois, Senator STEVENSON.

The first intention, of course, is to insure that the $20 million does not come out of somebody else's pet project or important project in his area, something that is ongoing, and vitally needed for economic development.

An even more compelling reason, perhaps, is that, as you undoubtedly have heard people who are both for and against this legislation state, this is very far-reaching legislation. We are trying to do something that is new, at least for this country. It is something that many other countries, Mr. President, have been doing for quite some time.

The fact is though that the bureaucracies at EDA and SBA simply are not at all familiar with what we hope will come to be known as effective trading companies, and it is just human nature that such bureaucracies and bureaucrats, in the absence of any specific set-aside of funds, would be far, far too likely to ignore the needs of these new entities.

Indeed, the record of SBA's helping out firms that create the largest proportion of jobs in this country is very poor indeed.

It was about a year ago that Senator RANDOLPH and I engaged in a colloquy on some EDA legislation, and it was apparent to all of us that EDA shuns much more than they should smaller, perhaps riskier, but certainly when it comes to creating jobs, more productive, firms than they should. EDA—and even SBA—tend to want to make safe bets, and a safe bet, Mr. President, is a bet that minimizes your losses and minimizes your returns.

Well, we have had more than enough of minimal returns, whether it be to our taxpayers, to our exporters, or to the influence and respect of this country. So I believe that the specific authorization we have in this legislation regarding SBA and EDA is good. It is important, it is necessary, and I would add that I have just been informed that the administration happens to share this view and they, too, are opposed to the amendment now before us.

Mr. TSONGAS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from North Carolina has 8 minutes remaining.

Mr. HELMS. Mr. President, I am delighted to yield such time as the Senator may require, just so I have 2 or 3 minutes remaining and provided I will not be cut off.

Mr. HEINZ. Mr. President, I think the Senator from Illinois can yield to the Senator from Massachusetts.

Mr. HELMS. Mr. President, I do not want to detain the able Senator from Massachusetts from seeking the floor, so I will not seek recognition at this time.

Mr. STEVENSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. STEVENSON. Mr. President, I yield 2 minutes to the Senator from Massachusetts.

Mr. TSONGAS. Mr. President, if I might inquire of the Chair, the time agreement that we are operating under allows for an amendment by the Senator from North Carolina as to funding the EDA, is that not correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. TSONGAS. And the amendment before us goes beyond EDA and also includes SBA, is that not also correct?

The PRESIDING OFFICER. The Senator is also correct.

Mr. TSONGAS. Mr. President, the issue has been raised in discussions prior to this discussion that a point of order may or may not lie. Just to make the record clear, I am not going to raise the point of order for two reasons: One, even though I believe it would be sustained, I understand that there is some question as to intent of the amendment and the discussion that took place on the floor. Second, I am confident that the arguments against the amendment are strong enough that a motion to table will succeed.

For that reason, and also out of courtesy to the Senator from North Carolina, I will not pursue the point of order.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I say to my friend from Massachusetts that I am not aware of the wording of any time agreement in terms of the specific definition of my amendment. I am sure the majority leader, in entering a request for the time agreement, did not mean to exclude the reference to the EDA. But I thank the Senator from Massachusetts for his courtesy.

Mr. President, as I listened to the distinguished managers of the bill, Mr. STEVENSON and Mr. HEINZ, it seemed to me that they could very well be arguing in favor of my amendment.

But the point is this: When are we going to stop this business of throwing money at problems? It is just like having a big dart board and we throw a dart and if it hits on $20 million, fine, and if it hits on $200 million fine, or whatever sum the dart might hit.

I go back to my original point that there is plenty of money for these two agencies to trim here and trim there and then do the job that this Congress wants done. There is no necessity for adding $20 million a year.

As a matter of fact, in the committee's own report, on page 12, it has this to say:

> The Small Business Administration, according to President Carter's Export Policy statement of September 26, 1978 was to provide up to $100 million in assistance to small businesses getting started in exporting.

Well, there it is, Mr. President. Why do we have to tack on 20 more million of the taxpayers' dollars just to make something look good? I think the taxpayer is getting tired of this fiddle that we play up here, tired of seeing whatever arithmetic the bureaucracy says it needs is what it gets.

And, of course, the people who are paying the tab are the taxpayers. I believe that if a poll were taken around the country, taxpayers would be shown to understand what the Senator from North Carolina is getting at.

Let it not be interpreted that this amendment is against building our exports. That is not the point. The point is throwing more money when there is enough there to do the job.

What Congress needs to do is to perform more oversight and say to the Small Business Administration, the EDA, and all the rest of them: "You get this job done."

As the Senator from Wisconsin will agree, there is plenty of money in that $6,400,000,000 designated for these two agencies to do the job that Congress wants done and which needs to be done.

Let not the line be drawn or pretended to be drawn between those who favor increased exports and those who do not. The question here is: Are we going to continue to throw darts at that dart board and come up with $20 million again just by chance? And that is all it is.

Senators can vote against this amendment, if they wish. But I am saying that $6,400,000,000 is enough for these two agencies.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, I ask for the yeas and nays.

Mr. HEINZ. Mr. President, I think we are all prepared to vote.

The PRESIDING OFFICER. The Senator from North Carolina has requested the yeas and nays.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HEINZ. Mr. President, has all time been yielded back?

The PRESIDING OFFICER. Not yet.

Mr. STEVENSON. Mr. President, I yield back the remainder of my time.

Mr. HELMS. Mr. President, I yield back the remainder of my time.

Mr. HEINZ. Mr. President, I move to table the Helms amendment.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from New York (Mr. MOYNIHAN), the Senator from Tennessee (Mr. SASSER), and the Senator from Alabama (Mr. STEWART) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) would vote "yea."

Mr. BAKER. I announce that the Senator from Mississippi (Mr. COCHRAN), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), the Senator from Delaware (Mr. ROTH), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 64, nays 13, as follows:

[Rollcall Vote No. 385 Leg.]

YEAS—64

Baucus	Hart	Pressler
Bellmon	Hatch	Pryor
Bentsen	Hatfield	Randolph
Boren	Hayakawa	Ribicoff
Boschwitz	Heinz	Riegle
Bradley	Hollings	Sarbanes
Bumpers	Humphrey	Schmitt
Burdick	Inouye	Schweiker
Byrd, Robert C.	Jackson	Simpson
Cannon	Johnston	Stennis
Chafee	Laxalt	Stevenson
Chiles	Leahy	Stone
Cohen	Levin	Talmadge
Cranston	Matsunaga	Thurmond
Danforth	Melcher	Tower
Dole	Metzenbaum	Tsongas
Domenici	Mitchell	Weicker
Durenberger	Nelson	Williams
Exon	Nunn	Young
Ford	Packwood	Zorinsky
Garn	Pell	
Glenn	Percy	

NAYS—13

Armstrong	Helms	Proxmire
Baker	Jepsen	Stafford
Byrd, Harry F., Jr.	Kassebaum	Wallop
DeConcini	Lugar	Warner

NOT VOTING—23

Bayh	Gravel	McGovern
Biden	Huddleston	Morgan
Church	Javits	Moynihan
Cochran	Kennedy	Roth
Culver	Long	Sasser
Durkin	Magnuson	Stevens
Eagleton	Mathias	Stewart
Goldwater	McClure	

So the motion to lay on the table Mr. HELMS' amendment (No. 2286) was agreed to.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENSON. Mr. President, I ask unanimous consent that I may have 30 seconds on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President, this bill will not by itself restore U.S. competitiveness in a newly competitve world. But it could be a milestone. It signifies a recognition by the Senate that the United States must break with the past if it is to compete in the future. It could lead to the creation of American trading companies which represent American business, large and small, worldwide, spotting the market opportunities, meeting the price competition, absorbing exchange rate fluctuations, putting the package transactions together, handling the export details—day in and day out. Only history will tell how much this bill does. If the House and President approve, the final test will be up to American business and agriculture.

Mr. President, I thank all my colleagues in this endeavor for their heroic efforts over a long period of time. This effort began about 3 years ago. In particular, I thank and commend Senator HEINZ and Senator DANFORTH for their very skillful and persistent efforts throughout to bring this bill to its present position.

I add my thanks to the staff and all the others who have assisted.

I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

THE IMPORTANCE OF EXPORT TRADING COMPANIES TO OUR TRADE PROMOTION EFFORTS

● Mr. CRANSTON. Mr. President, the Senate will take a small but important step in our continuing fight against the national trade deficit when we vote today on final passage of S. 2718, the Export Trading Companies Act.

While I continue to have some reservations about the extent of bank participation in export trading companies permitted by this legislation, I support this bill, as amended, and welcome its passage by the Senate.

In combating our continuing trade deficit, the United States has many weapons. We have our unsurpassed technological capabilities, our abundant natural resources and our well-trained and hard-working labor force. But if we are to make great progress in the effort to balance our trade and promote American exports, I believe it is also important for us to bring American ingenuity and organizational creativity to bear on this task. To increase trade efficiency and to penetrate foreign markets with small- and medium-size business exports, we need to encourage trade associations and export trading companies to organize and enter the marketplace.

The bill we are acting on today will do this. It will clear away some of the red-tape and regulatory underbrush which has inhibited the development in the United States of such trade associations, which have long been successful in such countries as Japan and South Korea. This bill will simplify procedures for establishment of such trading groups and will promote their development by establishing pilot funding programs through the Small Business Administration and the Export-Import Bank.

The Department of Commerce has estimated that nearly 20,000 American agricultural producers and manufacturers produce goods and services which are readily marketable abroad. These products could be highly competitive in foreign markets, but the inexperience and small size of many American firms has to date prevented the export of these goods and services on any significant scale. Regulatory uncertainties have served as a deterrent against formation of trading companies capable of absorbing the front end costs and the risks involved in foreign trade.

Mr. President, I am confident that the measure the Senate is adopting today will help to improve this situation markedly by facilitating the introduction of superior American goods and services into the world marketplace through the establishment of export trading companies.●

● Mr. DENTON. Mr. President, when the Senate began its debate last week on the export trading company bill, the senior Senator from Wisconsin expressed certain reservations about this legislation.

Addressing the general problem of trade, Senator PROXMIRE made three basic points. He stated that declining productivity is the root cause of our trade problems. He produced figures suggesting that our exports over the past 8 years have increased more rapidly than those of Japan and Germany. And finally he pointed out that, despite huge and persistent balance of trade deficits, our transactions with the rest of the world are roughly in balance on a long-term current accounts basis. After making these observations the Senator expressed strong reservations about the need for new export incentives, particularly when they involve changes in traditional ways of doing things.

When he identifies lagging productivity as fundamental to our diminishing competitiveness in world markets, my friend from Wisconsin is right on the mark. Improve productivity in America, lower unit cost of production, increase output per man-hour, and American products will inevitably become more competitive throughout the world. Our exports will increase.

Senator PROXMIRE and I share the view that policies to increase rates of productivity are absolutely indispensable both for our domestic economy and for our performance in international trade. On this issue we are in complete accord. I also acknowledge that, despite the many merits of S. 2718, it will not do much to increase productivity in our economy.

However, Mr. President, in addressing our problems with trade, it does not necessarily follow that we should look only to the core issue of productivity. There are things that we can and should be doing now to enable our exporters to meet the terms of competition in world markets.

Productivity is a long-term problem; it will take time to turn it around. But while we undertake this effort—and I know the Senator from Wisconsin will be one of those leading it—we can also take immediate steps to improve our trade performance and eliminate unilateral disadvantages faced by American business. We can, for instance, strengthen our ability to export by passing the Export Trading Company Act.

And we can take a careful look at statistics such as the St. Louis Federal Reserve figures cited in support of the thesis that we do not need to eliminate export disincentives.

According to the figures used by the Senator from Wisconsin, U.S. exports increased at an annual rate of 20.5 percent during the period 1972–79, or more than the increase for Germany and Japan.

One need only turn to page 2 of the St. Louis Fed's August 7 report on international economic conditions to appreciate that this export success was purchased at the price of a devalued dollar. Any nation, Mr. President, can increase exports if it is prepared to devalue its currency. During the period cited the effective exchange rate of the U.S. dollar decreased from 103 to 93.2, for an effective devaluation of 10.5 percent. During the same period the effective exchange rate of the German mark increased by more than 50 percent, while the Japanese yen also increased in value, although far less than the mark. A cheapening of ones own currency is a short-term treatment of symptoms and a long-term cop out.

One could also cite and document figures that present a less rosy view of U.S. export performance in recent years:

The U.S. share of total industrial country exports has declined from 23.2 percent in 1960 to 18.3 percent in 1979. Our share of manufactured exports has declined from 22.8 percent to 15.5 percent in the same period.

In 1975 we had a $7.7 billion deficit in our trade in manufactured goods with Japan. That deficit increased yearly and reached $19.6 billion in 1979.

During the period 1975–79, our exports to Japan increased by a factor of three, from $2 to $6 billion. Our imports from Japan, however, increased by a factor of almost five, from $5.6 to $25.6 billion.

We are losing ground in the vital high technology sector, an area that will be critical to our competitiveness in the eighties. In 1962 our share of high technology exports to developing countries was 46 percent; it was down to 31 percent in 1970, and down again to 25 percent in 1977. For the same 3 benchmark years the Japanese increased their share of the market from 6 to 13 to 22 percent.

A decade ago only 14 percent of our manufactured imports came from LDCs. Today the figure has almost doubled to 26 percent. I cannot think of a clearer warning signal that we are going to face stronger trade competition in the future from countries like Brazil, Korea, Mexico, and Taiwan.

So, Mr. President, particularly in rapidly growing markets like east Asia, and in important sectors like high technology, there is good reason to be uneasy about our future competitiveness in world markets.

The current accounts ledger actually confirms the existence of these problems. In making the case for satisfactory U.S. export growth in the 1972–79 period, the Senator from Wisconsin maintains that our accumulated deficit on current accounts was about $3 billion, or some $377 million a year. His figures are correct.

However, he could have used the same figures to make an entirely different—and more alarming—case. He could have pointed out that, during the period 1972–76 the United States enjoyed a current accounts surplus that averaged about $5.22 billion a year. For the period 1977 to the present we have run a current accounts deficit that averages over $10 billion per year. Mr. President, if there is a trend in our current accounts figures, there it is. A $15 billion turn-around from comfortable surplus to substantial deficit. We can no longer rely on a current accounts surplus to rescue us from vast and consistent merchandise trade deficits. We can no longer talk about an historical deficit of minor proportions;

we are staring down the barrel of a 4-year deficit that could well total $40 billion.

No one, Mr. President, would pretend that the export trading company legislation pending before the Senate is going to "solve" our very real and very important problems of competitiveness in international markets. Senator PROXMIRE is correct when he says that the real key to improving our trade outlook is increased productivity and efficiency in our domestic economy.

But legislation like S. 2718 can and will help American exporters market American products overseas while we deal with the root causes of the problem. It will give the American exporting community access to the sort of efficient, effective trading companies that have long served the interests of our competitors in world trade.

Mr. President, we can no longer afford to turn our backs on this type of important legislation simply because it breaks new ground. When it comes to important issues like trade, I think we must be prepared to learn from the success of nations like Japan. I believe we have got to be ready to try some new ideas, because the old ones are not working very well.

As one Senator interested in both domestic economic policy and a strategy that will enable America to compete for international markets in the eighties, I am a strong advocate of S. 2718 and urge my colleagues to vote in favor of this important legislation.●

● Mr. BAUCUS. Mr. President, I want to take this opportunity to express my strong support for S. 2718, the Trading Export Company Act, which we are considering today.

I believe this measure is important as a symbol, and for the things that it seeks to accomplish. Its symbolic importance lies in the fact that it is the first major piece of recent legislation tied to our new efforts to improve our export competitiveness. Much more legislation is waiting to be considered. It will take much time before we have gone through it all. But here we have an item which actually has emerged after substantial debate, many hearings, and a recommendation from the Banking Committee. I believe we should act as soon as possible to demonstrate the importance we attach to our exports.

The bill should pass without any amendments limiting the banking or antitrust titles. I fully recognize and share the concern regarding the possibly difficult position in which banks might be placed should they become owners of export companies. Nonetheless, the arguments are convincing that the bill does provide safeguards to assure that any potential for trouble is greatly limited, and that there have been precedents where similar problems have been adequately handled.

At heart, however, I believe there is one overriding importance here: we must be prepared to experiment with new ways of handling our export programs even if they challenge our past way of doing things. That is what progress is, and that is how we will become more competitive in the world. We have to be very careful, but we also must be willing to try new methods.

Regarding the antitrust exemptions, I think that this legislation adequately protects our laws and will serve to make it easier for companies to compete in worldwide markets. Once again the issue is the same: are we ready to make some minor adjustments in past practices, knowing that there might be a risk, but knowing also that we must change to adapt in this situation?

My feeling is that we must be prepared to take such risks and try new methods. Not to do so means stagnation and loss of our competitiveness.

For this reason, I endorse this legislation. I hope enough Senators will think similarly to assure its passage.●

● Mr. ROTH. Mr. President, I strongly urge my colleagues to support S. 2718, the Export Trading Company Act of 1980 and the Export Trade Association Act of 1980, as amended by Senator STEVENSON and Senator DANFORTH. If approved, this bill would contribute importantly to an improved U.S. export performance by providing for the extension of more efficient export services to U.S. producers and suppliers. At a time when our trade imbalance is growing larger with each passing day and our businesses are finding it increasingly difficult to compete in the international marketplace, we should concentrate our efforts on passing measures that promote exports and remove unnecessary impediments to selling overseas.

Mr. President, I have spoken in numerous fora and on many occasions on the importance of increasing our competitiveness and hence our exports. We can accomplish this objective by improving our productivity, the quality of our goods and the reliability of our supply. Many of our domestic firms are willing to undertake that commitment; but they need our help. They need new laws that will promote or facilitate international sales. They need changes in laws that hinder exports. S. 2718 would achieve both these goals.

Title I of the trading companies bill is the export promotion title. Its most important provisions direct the Commerce Department's Economic Development Administration and Small Business Administration to provide special consideration of trading company loan applications. This title also directs the Export-Import Bank to provide loan guarantees to export trading companies, and allows U.S. banks to make limited investments in those entities. These provisions, as well as those authorizing appropriations, should encourage and concretely support the formation of trading companies that will, in turn, help our small- and medium-sized firms to sell in the world market.

Title II of the bill provides a mechanism for certification and antitrust clearance through the Department of Commerce. Such a provision, while maintaining the integrity of our domestic antitrust objectives, would allow trading companies to do international business, certain of being within the bounds of law. Such certainty can only add to our exporters' international strength and reliability.

I would like to applaud my colleague, Senator STEVENSON, for spearheading this most important effort to promote the establishment of trading companies. We must get behind him to pass this bill in the Senate and to insure that the House acts quickly to approve this legislation, as well.

Mr. President, I believe it is crucial that we enact S. 2718 into law as it now stands. Our small- and medium-sized firms, in particular, need the marketing, financing and other export services that these intermediaries can provide. With this kind of assistance, our producers will be able to compete more effectively in an international marketplace that is becoming increasingly difficult to conquer.●

Mr. ROBERT C. BYRD. Mr. President, I support legislation to create export trading companies capable of promoting the sale of American goods and services abroad. The bill before us today has been the subject of extensive hearings and discussion. It is a creative approach to the export imperative facing this Nation.

As with all innovation, this legislation is not without controversy. By permitting banks to invest in export trading companies, the bill breaks with a long-held American tradition that banks should not be directly involved, as owners, in the commerce of goods and services. As repositories of the public's savings, banks have always been regulated so as to make them risk averters. Additionally, because of their control of massive amounts of capital, concern over the impact on competition has caused us to prevent banks from entering the business of concern.

I raise these considerations because I hope that as this bill winds its way through the legislative process, every reasonable effort will be made to insure that bank safety and competition are properly protected.

S. 2718 addresses these issues in a constructive fashion. Nevertheless, there may be additional protections which, while not eliminating the concept of bank participation, could insure that this break with our traditional banking policies will not be regretted in the future.

There are many imperatives to increased exports. Our continuous merchandise trade deficit, largely due to increased oil prices, has resulted in considerable instability for the dollar in recent years. In 1979 our trade deficit was almost $25 billion.

World trade encourages international interdependence and peace. Exports provide a larger market for our factories, mines, and service sectors, thus permitting them to operate at full capacity, and more productivity.

American companies, largely because of the enormous markets which they enjoy in the United States, historically have not been as aggressive in promoting foreign sales as have their foreign competitors. Export trading companies could provide the means to market countless goods and services produced by

American companies which are either too small, or not equipped to develop foreign markets for their own products.

During a recent meeting with the West Virginia Chamber of Commerce, chamber members offered an example of the relevance of trading companies to my State. West Virginia has many small coal operators. The people who run these small mines know a great deal about mining, and some of them are experts in the domestic coal market, but few are experienced in international coal markets or in the intricacies of selling abroad.

One might envision the evolution of export trading companies which specialize in the marketing of American coal in Europe, thus permitting the small operator to concentrate on what he does best—mining coal.

Clearly, American coal can already be marketed by third parties, such as commodity dealers. This bill simply creates another legal vehicle for arranging and financing this activity.

Special note should be taken of Senator ADLAI STEVENSON'S work on this bill. As he approaches the end of his service, rather than resting on the laurels of two successful terms as a U.S. Senator, ADLAI has become more involved than ever in the issues of U.S. economic development. His work on the International Finance Subcommittee of the Banking Committee, and the Science, Technology and Space Subcommittee of the Commerce Committee have made him a widely respected authority in the areas of worldwide economic competition and national policies to promote economic growth.

Senator STEVENSON has consistently argued the need for an industrial policy, long before it became fashionable to do so. His contributions to the work of the Democratic Task Force on Economic Policy have been salutory, providing the broad themes for the work of the task force subcommittees.

From deliberations involving ethics, to Senate reorganization, to economic policy, ADLAI STEVENSON will be remembered as a man of broad and clear vision. I shall miss his intellect. I shall not miss his friendship, because I shall continue to be his friend, and he will continue to be mine. But I certainly will miss seeing my friend often. I know that his public life is far from over, and I join all my colleagues in wishing him a future full of challenge and satisfaction.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and *third reading of the bill.*

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CULVER), the Senator from New Hampshire (Mr. DURKIN), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Louisiana (Mr. LONG), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from New York (Mr. MOYNIHAN), the Senator from Tennessee (Mr. SASSER), the Senator from Alabama (Mr. STEWART), and the Senator from Washington. (Mr. MAGNUSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH), the Senator from New Hampshire (Mr. DURKIN), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), and the Senator from New York (Mr. MOYNIHAN), would each vote "yea."

Mr. BAKER. I announce that the Senator from Mississippi (Mr. COCHRAN), the Senator from Arizona (Mr. GOLDWATER), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), the Senator from Delaware (Mr. ROTH), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The PRESIDING OFFICER (Mr. BRADLEY). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 77, nays 0, as follows:

[Rollcall Vote No. 386 Leg.]

YEAS—77

Armstrong	Glenn	Pell
Baker	Hart	Percy
Baucus	Hatch	Pressler
Bellmon	Hatfield	Proxmire
Bentsen	Hayakawa	Pryor
Boren	Heflin	Randolph
Boschwitz	Heinz	Ribicoff
Bradley	Helms	Riegle
Bumpers	Hollings	Sarbanes
Burdick	Humphrey	Schmitt
Byrd, Harry F., Jr.	Inouye	Schweiker
Byrd, Robert C.	Jackson	Simpson
Cannon	Jepsen	Stafford
Chafee	Johnston	Stennis
Chiles	Kassebaum	Stevenson
Cohen	Laxalt	Stone
Cranston	Leahy	Talmadge
Danforth	Levin	Thurmond
DeConcini	Lugar	Tower
Dole	Matsunaga	Tsongas
Domenici	Melcher	Wallop
Durenberger	Metzenbaum	Warner
Exon	Mitchell	Weicker
Ford	Nelson	Williams
Garn	Nunn	Young
	Packwood	Zorinsky

NOT VOTING—23

Bayh	Gravel	McGovern
Biden	Huddleston	Morgan
Church	Javits	Moynihan
Cochran	Kennedy	Roth
Culver	Long	Sasser
Durkin	Magnuson	Stevens
Eagleton	Mathias	Stewart
Goldwater	McClure	

So the bill (S. 2718) was passed as follows:

S. 2718

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXPORT TRADING COMPANIES

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1980".

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

(2) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

(4) export trade intermediaries, such as trading companies, can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant portion of potential United States exporters);

(6) State and local government activities which initiate, facilitate, or expand exports of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(7) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations; and

(8) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services, particularly by small, medium-size and minority concerns, by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods in the United States or services produced in the United States *produced, and exported, or in the course of* being exported, from the United States to any foreign nation;

(2) the term "goods produced in the United States" means tangible property manufactured, produced, grown, or extracted in the United States, the cost of the imported raw materials and components thereof shall not exceed 50 per centum of the sales price;

(3) the term "services produced in the United States" includes, but is not limited to, accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance

legal, management, repair, tourism, training, and transportation services, not less than 50 per centum of the sales or billings of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(5) the term "export trading company" means a company, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for the purposes of—

(A) exporting goods and services produced in the United States; and

(B) facilitating the exportation of goods and services produced in the United States by unaffiliated persons by providing one or more export trade services;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(7) the term "Secretary" means the Secretary of Commerce; and

(8) the term "company" means any corporation, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization.

(b) The Secretary is authorized, by regulation, to further define such terms consistent with this section.

FUNCTIONS OF THE SECRETARY OF COMMERCE

SEC. 104. The Secretary shall promote and encourage the formation and operation of export trading companies by providing information and advice to interested persons and by facilitating contact between producers of exportable goods and services and firms offering export trade services.

OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS, BANK HOLDING COMPANIES, AND INTERNATIONAL BANKING CORPORATIONS

SEC. 105. (a) For the purpose of this section—

(1) the term "banking organization" means any State bank, national bank, Federal savings bank, bankers' bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(2) the term "State bank" means any bank which is incorporated under the laws of any State, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, or any bank (except a national bank) which is operating under the Code of Law for the District of Columbia (hereinafter referred to as a "District bank");

(3) the term "State member bank" means any State bank, including a bankers' bank, which is a member of the Federal Reserve System;

(4) the term "State nonmember insured bank" means any State bank, including a bankers' bank, which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(5) the term "bankers bank" means any bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks (except to the extent State law requires directors' qualifying shares) and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors, or employees;

(6) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(7) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(8) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(9) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank or any District bank;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank except a District bank; and

(D) the Federal Home Loan Bank Board with respect to a Federal savings bank.

In any situation where the banking organization holding or making an investment in an export trading company is a subsidiary of another banking organization which is subject to the jurisdiction of another agency, and some form of agency approval or notification is required, such approval or notification need only be obtained from or made to, as the case may be, the appropriate Federal banking agency for the banking organization making or holding the investment in the export trading company;

(10) the term "capital and surplus" means paid in and unimpaired capital and surplus, and includes undivided profits;

(11) an "affiliate" of a banking organization or export trading company is a person who controls, is controlled by, or is under common control with such banking organization or export trading company;

(12) the terms "control" and "subsidiary" shall have the same meanings assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956; and

(13) for the purposes of this section, the term "export trading company" means a company which does business under the laws of the United States or any State and which is exclusively engaged in activities related to international trade, whether operated for profit or as a nonprofit organization: *Provided, however,* That any such company must also either meet the definition of export trading company in section 103(a)(5) of this Act, or be organized and operated principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this Act: *Provided, further,* That nothing in this Act shall be construed to permit any such company, for purposes of this section, (A) to engage in the business of underwriting, selling, or distributing securities, or (B) to engage in manufacturing or agricultural production activities.

(b)(1) Notwithstanding any prohibition, restriction, limitation, condition, or requirement of any law applicable only to banking organizations, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency, if such investment does not cause an export trading company to become a subsidiary of the investing banking organization; and

(B) make investments in excess of an aggregate amount of $10,000,000 in one or more export trading companies, or make any investment or take any other action which causes an export trading company to become a subsidiary of the investing banking organization of which will cause more than 50 per centum of the voting stock of an export trading company to be owned or controlled by banking organizations, only with the prior approval of the appropriate Federal banking agency.

Any banking organization which makes an investment under authority of clause (A) of the preceding sentence shall promptly notify the appropriate Federal banking agency of such investment and shall file such reports on such investment as such agency may require. If, after receipt of any such notification, the appropriate Federal banking agency determines, after notice and opportunity for hearing, that the export trading company is a subsidiary of the investing banking organization, it shall have authority to disapprove the investment or impose conditions on such investment under authority of subsection (d). In furtherance of such authority, the appropriate Federal banking agency may require divestiture of any voting stock or other evidences of ownership previously acquired, and may impose conditions necessary for the termination of any controlling relationship.

(2) If a banking organization proposes to make any investment or engage in any activity included within the following two subparagraphs, it must give the appropriate Federal banking agency ninety days prior written notice before it makes such investment or engages in such activity:

(A) any additional investment in an export trading company subsidiary; or

(B) the engagement by any export trading company subsidiary in any line of activity, including specifically the taking of title to goods, wares, merchandise, or commodities, if such activity was not disclosed in any prior application for approval.

During the notification period provided under this paragraph, the appropriate Federal banking agency may, by written notice, disapprove the proposed investment or activity or impose conditions on such investment or activity under authority of subsection (d). An additional investment or activity covered by this paragraph may be made or engaged in, as the case may be, prior to the expiration of the notification period if the appropriate Federal banking agency issues written notice of its intent not to disapprove.

(3) In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1)(B) of this subsection within a period of one hundred and twenty days, which period begins on the date the application has been accepted for processing by the appropriate Federal banking agency, the application shall be deemed to have been granted. In the event of the failure of the appropriate Federal banking agency either to disapprove or to impose conditions on any investment or activity subject to the prior notification requirements of paragraph (2) of this subsection within the sixty-day period provided therein, such period beginning on the date the notification has been received by the appropriate Federal banking agency, such investment or activity may be made or engaged in, as the case may be, any time after the expiration of such period.

(c) The following limitations apply to ex-

port trading companies and the investments in such companies by banking organizations:

(1) The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership.

(2) The total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of credit by the banking organization and its direct and indirect subsidiaries to such export trading company shall not exceed 10 per centum of the banking organization's capital and surplus.

(3) A banking organization that owns any voting stock or other evidences of ownership of an export trading company shall terminate its ownership of such stock if the export trading company takes positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of its business operations.

(4) No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(d)(1) In the case of every application under subsection (b)(1)(B) of this section, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns (with special emphasis on small, medium-size and minority concerns), and to improving United States competitiveness in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under subsection (b)(1)(B) if it finds that the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(2) In approving any application submitted under subsection (b)(1)(B), the appropriate Federal banking agency may impose such conditions which, under the circumstances of such case, it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices. With respect to the taking of title to goods, wares, merchandise, or commodities by any export trading company subsidiary of a banking organization, the appropriate Federal banking agencies may, by order, regulation, or guidelines, establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. In particular, the appropriate Federal banking agencies may establish inventory-to-capital ratios, based on the capital of the export trading company subsidiary, for those circumstances in which the export trading company subsidiary may bear a market risk on inventory held.

(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal banking agency must give due consideration to the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company, and the identity, character, and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions or set standards for the taking of title which unnecessarily disadvantage, restrict or limit export trading companies in competing in world markets or in achieving the purposes of section 102 of this Act. In particular, in setting standards for the taking of title under the preceding paragraph (2), the appropriate Federal banking agencies shall give special weight to the need to take title in certain kinds of trade transactions, such as international barter transactions.

(4) Notwithstanding any other provision of this Act, the appropriate Federal banking agency may, whenever it has reasonable cause to believe that the ownership or control of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the banking organization, after due notice and opportunity for hearing, to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its investment in the export trading company.

(5) On or before two years after enactment of this Act, the appropriate Federal banking agencies shall jointly report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance, and Urban Affairs of the House of Representatives their recommendations with respect to the implementation of this section, their recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-sized and minority business concerns, and their recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

(e)(1) Any party aggrieved by an order of an appropriate Federal banking agency under this section may obtain a review of such order in the United States court of appeals within any circuit wherein such organization has its principal place of business, or in the court of appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the order was based. The court shall set aside any order found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege or immunity; or, (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (D) without observance of procedure required by law. Except for violations of subsection (b)(3) of this section, the court shall remand for further consideration by the appropriate Federal banking agency any order set aside solely for procedural errors and may remand for further consideration by the appropriate Federal banking agency any order set aside for substantive errors. Upon remand, the appropriate Federal banking agency shall have no more than sixty days from date of issuance of the court's order to cure any procedural error or reconsider its prior order. If the agency fails to act within this period, the application or other matter subject to review shall be deemed to have been granted as a matter of law.

(f)(1) The appropriate Federal banking agencies are authorized and empowered to issue such rules, regulations, and orders, to require such reports, to delegate such functions, and to conduct such examinations of subsidiary export trading companies, as each of them may deem necessary in order to perform their respective duties and functions under this section and to administer and carry out the provisions and purposes of this section and prevent evasions thereof.

(2) In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this section may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency defined in that Act.

(g) Nothing in this legislation shall be construed to permit a State chartered bank to invest in an export trading company unless the State chartered bank is specifically permitted to do so by State law.

INITIAL INVESTMENTS AND OPERATING EXPENSES

SEC. 106. (a) The Economic Development Administration and the Small Business Administration are directed, in their consideration of applications by export trading companies for loans and guarantees and operating grants to nonprofit organizations, including applications to make new investments related to the export of goods or services produced in the United States and to meet operating expenses, to give special weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small, medium-size and minority businesses or agricultural concerns in the export market.

(b) There are authorized to be appropriated as necessary to meet the purposes of this section, $20,000,000 for each fiscal year, 1981, 1982, 1983, 1984, and 1985. Amounts appropriated pursuant to the authority of this subsection shall be in addition to amounts appropriated under the authority of other Acts.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 107. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other private creditors to export trading companies as defined in section 103(5) of this Act, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

EXPORT MANAGEMENT EXPANSION ASSISTANCE

SEC. 108. (a) The Secretary is authorized to make grants to subsidize the employment of export managers by small business manufacturing firms which have not previously been exporters in substantial amounts. The amount of such a grant may not exceed the

lesser of (1) 50 per centum of the salary and other expenses related to the employment of a full-time export manager for a period of one year, or (2) $40,000.

(b) To be eligible under this section, each firm must submit to the Secretary an application which—

(1) demonstrates that the firm has not derived more than an average of 5 per centum of its sales volume (in monetary terms) from exports during the five most recent years and does not currently employ an export manager;

(2) demonstrates that the firm is a small business manufacturing firm, as defined by the Secretary after consulting with the Administrator of the Small Business Administration;

(3) describes the qualifications of a person proposed to be hired as the firm's export manager on a full-time basis for a period of at least one year, and describes the terms and conditions of that person's employment by the firm and the amount of the grant applied for to subsidize the costs of that employment; and

(4) describes the products and services considered by the firm to be suitable for export and the general outlines of the export program to be undertaken under the direction of the manager.

(c) In selecting firms to receive grants under this section, the Secretary shall consider the desirability of determining the feasibility of this approach to export promotion in each of the regions of the Department of Commerce and in relation to a variety of products and services which, in the opinion of the Secretary, have export potential.

(d) There are authorized to be appropriated to the Secretary not to exceed $3,000,000 for each of the fiscal years 1981, 1982, and 1983, to carry out the program established by this section.

(e) The Secretary shall develop a plan to evaluate the cost-effectiveness of the program of export promotion established by this section and its effectiveness as compared with other export promotion programs, including the amount of export sales generated by small businesses assisted under this section. For the purpose of the evaluation the Secretary is authorized to require any firm receiving assistance under this section to furnish such information as is deemed appropriate to complete the required evaluation. The Secretary shall make recommendations concerning continuation or expansion of the program and improvements in the program structure. Such evaluation and recommendations shall be submitted to the Congress prior to October 1, 1982.

TITLE II—EXPORT TRADE ASSOCIATIONS

SHORT TITLE

SEC. 201. This title may be cited as the "Export Trade Association Act of 1980".

FINDINGS; DECLARATION OF PURPOSE

SEC. 202. (a) FINDINGS.—The Congress finds and declares that—

(1) the exports of the American economy are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every $7 of total United States goods produced;

(2) exports will play an even larger role in the United States economy in the future in the face of severe competition from foreign government-owned and subsidized commercial entities;

(3) between 1963 and 1977 the United States share of total world exports fell from 19 per centum to 13 per centum;

(4) trade deficits contribute to the decline of the dollar on international currency markets, fueling inflation at home;

(5) service-related industries are vital to the well-being of the American economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and represent a small but rapidly rising percentage of United States international trade;

(6) small and medium-sized firms are prime beneficiaries of joint exporting, through pooling of technical expertise, help in achieving economies of scale, and assistance in competing effectively in foreign markets; and

(7) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports.

(b) PURPOSE.—It is the purpose of this Act to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

DEFINITIONS

SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–65) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

"SECTION 1. DEFINITIONS.

"As used in this Act—

"(1) EXPORT TRADE.—The term 'export trade' means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported from the United States or any territory thereof to any foreign nation.

"(2) SERVICE.—The term 'service' means intangible economic output, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, and communication services.

"(3) EXPORT TRADE ACTIVITIES.—The term 'export trade activities' means activities or agreements in the course of export trade.

"(4) METHODS OF OPERATION.—The term 'methods of operation' means the methods by which an association or export trading company conducts or proposes to conduct export trade.

"(5) TRADE WITHIN THE UNITED STATES.—The term 'trade within the United States' whenever used in this Act means trade or commerce among the several States or in any territory of the United States, or in the District of Columbia, or between any such territory and another, or between any such territory or territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"(6) ASSOCIATION.—The term 'association' means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations whether operated for profit or organized as nonprofit corporations, which are created under and exist pursuant to the laws of any State or of the United States.

"(7) EXPORT TRADING COMPANY.—The term 'export trading company' means an export trading company as defined in section 103(5) of the Export Trading Company Act of 1980.

"(8) ANTITRUST LAWS.—The term 'antitrust laws' means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12), sections 5 and 6 of the Federal Trade Commission Act (15 U.S.C. 45, 46), and any State antitrust or unfair competition law.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(10) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(11) COMMISSION.—The term 'Commission' means the Federal Trade Commission.".

ANTITRUST EXEMPTION

SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–65) is amended by striking out section 2 (15 U.S.C. 62) and inserting in lieu thereof the following:

"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

"(a) ELIGIBILITY.—The export trade, export trade activities, and methods of operation of any association, entered into for the sole purpose of engaging in export trade, and engaged in or proposed to be engaged in such export trade, and the export trade, export trade activities and methods of operation of any export trading company, that—

"(1) serve to preserve or promote export trade;

"(2) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association or export trading company;

"(3) do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(4) do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(5) do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members; and

"(6) do not constitute trade or commerce in the licensing of patents, technology, trademarks, or knowhow, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or export trading company or its members shall, when certified according to the procedures set forth in this Act, be eligible for the exemption provided in subsection (b).

"(b) EXEMPTION.—An association or an export trading company and its members are exempt from the operation of the antitrust laws with respect to their export trade, export trade activities and methods of operation that are specified in a certificate issued according to the procedures set forth in this Act, carried out in conformity with the provisions, terms, and conditions prescribed in such certificate and engaged in during the period in which such certificate is in effect. The subsequent revocation or invalidation in whole or in part of such certificate shall not render an association or its members or an export trading company or its members, liable under the antitrust laws for such export trade, export trade activities, or methods of operation engaged in during such period.

"(c) DISAGREEMENT OF ATTORNEY GENERAL OR COMMISSION.—Whenever, pursuant to section 4(b)(1) of this Act, the Attorney General or Commission has formally advised the Secretary of disagreement with his determination to issue a proposed certificate, and the Secretary has nonetheless issued such proposed certificate or an amended certificate, the exemption provided by this section shall not be effective until thirty days after the issuance of such certificate.".

AMENDMENTS OF SECTION 3

SEC. 205. (a) CONFORMING CHANGES IN STYLE.—The Webb-Pomerene Act (15 U.S.C. 61–65) is amended—

(1) by inserting immediately before section 3 (15 U.S.C. 63) the following:

"SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCIATIONS PERMITTED.",

(2) by striking out "Sec. 3. That nothing" in section 3 and inserting in lieu thereof "Nothing".

ADMINISTRATION; ENFORCEMENT; REPORTS

SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out sections 4 and 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the following sections:

"SEC. 4. CERTIFICATION.

"(a) PROCEDURE FOR APPLICATION.—Any association or export trading company seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

"(1) The name of the association or export trading company.

"(2) The location of all of the offices or places of business of the association or export trading company in the United States and abroad.

"(3) The names and addresses of all of the officers, stockholders, and members of the association or export trading company.

"(4) A copy of the certificate or articles of incorporation and bylaws, if the association or export trading company is a corporation; or a copy of the articles, partnership, joint venture, or other agreement or contract under which the association or export trading company conducts or proposes to conduct its export trade activities or contract of association, if the association or export trading company is unincorporated.

"(5) A description of the goods, wares, merchandise, or services which the association or export trading company or their members export or propose to export.

"(6) A description of the domestic and international conditions, circumstances, and factors which show that the association or export trading company and its activities will serve a specified need in promoting the export trade of the described goods, wares, merchandise, or services.

"(7) The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods, wares, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

"(8) The names of all countries where export trade in the described goods, wares, merchandise, or services is conducted or proposed to be conducted by or through the association or export trading company.

"(9) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association or export trading company; the relation of the association or export trading company to other associations, corporations, partnerships, and individuals; and competition or potential competition, and effects of the association or export trading company thereon. The Secretary may request such information as part of an initial application or as a necessary supplement thereto. The Secretary may not request information under this paragraph which is not reasonably available to the person making application or which is not necessary for certification of the prospective association or export trading company.

"(b) ISSUANCE OF CERTIFICATE.—

"(1) NINETY-DAY PERIOD. The Secretary shall issue a certificate to an association or export trading company within ninety days after receiving the application for certification or necessary supplement thereto if the Secretary, after consultation with the Attorney General and Commission, determines that the association and, its export trade, export trade activities and methods of operation, or export trading company, and its export trade, export trade activities and methods of operation meet the requirements of section 2 of this Act and will serve a specified need in promoting the export trade of the goods, wares, merchandise, or services described in the application for certification. The certificate shall specify the permissible export trade, export trade activities and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary deems necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that he proposes to issue. The Attorney General or Commission may, within fifteen days thereafter, give written notice to the Secretary of an intent to offer advice on the determination. The Attorney General or Commission may, after giving such written notice and within forty-five days of the time the Secretary has delivered a copy of a proposed certificate, formally advise the Secretary and the petitioning association or export trading company of disagreement with the Secretary's determination. The Secretary shall not issue any certificate prior to the expiration of such forty-five day period unless he has (A) received no notice of intent to offer advice by the Attorney General or the Commission within fifteen days after delivering a copy of a proposed certificate, or (B) received any noticed formal advice of disagreement or written confirmation that no formal disagreement will be transmitted from the Attorney General and the Commission. After the forty-five day period or, if no notice of intent to offer advice has been given, after the fifteen-day period, the Secretary shall either issue the proposed certificate, issue an amended certificate, or deny the application. Upon agreement of the applicant, the Secretary may delay taking action for not more than thirty additional days after the forty-five day period. Before offering advice on a proposed certification, the Attorney General and Commission shall consult in an effort to avoid, wherever possible, having both agencies offer advice on any application.

"(2) EXPEDITED CERTIFICATION.—In those instances where the temporary nature of the export trade activities, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of the association or export trading company which have a significant impact on its export trade, make the 90-day period for application approval described in paragraph (1) of this subsection, or an amended application approval as provided in subsection (c) of this section, impractical for the association or export trading company seeking certification, such association or export trading company may request and may receive expedited action on its application for certification.

"(3) AUTOMATIC CERTIFICATION FOR EXISTING ASSOCIATIONS.—Any association registered with the Federal Trade Commission under this Act as of April 3, 1930, may file with the Secretary an application for automatic certification of any export trade, export trade activities, and methods of operation in which it was engaged prior to enactment of the Export Trade Association Act of 1980. Any such application must be filed within 180 days after the date of enactment of such Act and shall be acted upon by the Secretary in accordance with the procedures provided by this section. The Secretary shall issue to the association a certificate specifying the permissible export trade, export trade activities, and methods of operation that he determines are shown by the application (including any necessary supplement thereto), on its face, to be eligible for certification under this Act, and including any terms and conditions the Secretary deems necessary to comply with the requirements of section 2(a) of this Act, unless the Secretary possesses information clearly indicating that the requirements of section 2(a) are not met.

"(3) APPEAL OF DETERMINATION.—If the Secretary determines not to issue a certificate to an association or export trading company which has submitted an application or an amended application for certification, then he shall—

"(A) notify the association or export trading company of his determination and the reasons for his determination, and

"(B) upon request made by the association or export trading company afford it an opportunity for a hearing with respect to that determination in accordance with section 557 of title 5, United States Code.

"(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF CERTIFICATE.—Whenever there is a material change in the membership, export trade, export trade activities, or methods of operation of an association or export trading company then it shall report such change to the Secretary and may apply to the Secretary for an amendment of its certificate. Any application for an amendment to a certificate shall set forth the requested amendment of the certificate and the reasons for the requested amendment. Any request for the amendment of a certificate shall be treated in the same manner as an original application for a certificate. If the request is filed within thirty days after a material change which requires the amendment, and if the requested amendment is approved, then there shall be no interruption in the period for which the certificate is in effect.

"(d) AMENDMENT OR REVOCATION OF CERTIFICATE BY SECRETARY.—After notifying the association or export trading company involved and after an opportunity for hearing pursuant to section 554 of title 5, United States Code, the Secretary, on his own initiative—

"(1) may require that the organization or operation of the association or export trading company be modified to correspond with its certification, or

"(2) shall, upon a determination that the export trade, export trade activities or methods of operation of the association or export trading company no longer meet the requirements of section 2 of this Act, revoke the certificate or make such amendments as may be necessary to satisfy the requirements of such section.

"(e) ACTION FOR INVALIDATION OF CERTIFICATE BY ATTORNEY GENERAL OR COMMISSION.—

"(1) The Attorney General or the Commission may bring an action against an association or export trading company or its members to invalidate, in whole or in part, its certificate on the grounds that the export trade, export trade activities or methods of operation of the association or export trading company fail or have failed to meet the requirements of section 2 of this Act. Except in the case of an action brought during the period before an antitrust exemption becomes effective, as provided for in section 2(c), Attorney General or Commission shall notify any association or export trading company or member thereof, against which it intends to bring an action for invalidation thirty days in advance, as to its intent to file an action under this subsection. The district court shall consider any issues presented in any such action de novo and if it finds that the requirements of section 2 are not met, it shall issue an order declaring the certificate invalid or any other order necessary to effec-

tuate the purposes of this Act and the requirements of section 2.

"(2) Any action brought under this subsection shall be considered an action described in section 1337 of title 28, United States Code. Pending any such action which was brought during the period any exemption is held in abeyance pursuant to section 2(c) of this Act, the court may make such temporary restraining order or prohibition as shall be deemed just in the premises.

"(3) No person other than the Attorney General or Commission shall have standing to bring an action against an association or export trading company or their respective members for failure of the association or export trading company or their respective export trade, export trade activities or methods of operation to meet the eligibility requirements of section 2 of this Act.

"(f) COMPLIANCE WITH OTHER LAWS.—Each association and each export trading company and any subsidiary thereof shall comply with United States export control laws pertaining to the export or transshipment of any good on the Commodity Control List to controlled countries. Such laws shall be complied with before actual shipment.

"SEC. 5. GUIDELINES.

"(a) INITIAL PROPOSED GUIDELINES.—Within ninety days after the enactment of the Export Trade Association Act of 1980, the Secretary, after consultation with the Attorney General, and the Commission shall publish proposed guidelines for purposes of determining whether export trade, export trade activities and methods of operation of an association or export trading company will meet the requirements of section 2 of this Act.

"(b) PUBLIC COMMENT PERIOD.—Following publication of the proposed guidelines, and any proposed revision of guidelines, interested parties shall have thirty days to comment on the proposed guidelines. The Secretary shall review the comments and, after consultation with the Attorney General, and Commission, publish final guidelines within thirty days after the last day on which comments may be made under the preceding sentence.

"(c) PERIODIC REVISION.—After publication of the final guidelines, the Secretary shall periodically review the guidelines and, after consultation with the Attorney General, and the Commission, propose revisions as needed.

"(d) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—The promulgation of guidelines under this section shall not be considered rulemaking for purposes of subchapter II of chapter 5 of title 5, United States Code, and section 553 of such title shall not apply to their promulgation.

"SEC. 6. ANNUAL REPORTS.

"Every certified association or export trading company shall submit to the Secretary an annual report, in such form and at such time as he may require, which report updates where necessary the information described by section 4(a) of this Act.

"SEC. 7. OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE.

"The Secretary shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies through the use of provisions of this Act in a manner consistent with this Act. The Office Export Trade in the Department of Commerce shall report to the congressional committees of appropriate jurisdiction on an annual basis, all East-West trade transactions requiring validated licenses, and any other relevant information on the role of U.S. export trading companies or subsidiaries thereof in the East-West trade.

"SEC. 8. TEMPORARY ANTITRUST EXEMPTION FOR EXISTING ASSOCIATIONS.

"(a) ELIGIBILITY.—To be eligible for the antitrust exemption provided by this section, an association must have been registered with the Federal Trade Commission under this Act on April 3, 1980.

"(b) DURATION.—The antitrust exemption provided by this section shall extend only to the existence of an eligible association, and to agreements made and acts done by such association, prior to one hundred and eighty days after the date of enactment of the Export Trade Association Act of 1980, or, in the event that an eligible association files an application for certification pursuant to section 4 of this Act during such one hundred and eighty days, prior to the Secretary's determination on such application becoming final.

"(c) EXEMPTION.—Subject to the limitations in subsections (a) and (b), nothing contained in sections 1 to 7 of the Sherman Act shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: Provided, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United State or otherwise restrains trade therein.

"SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL REPORT—INFORMATION.

"(a) GENERAL RULE.—Portions of applications made under section 4, including amendments to such applications, and annual reports made under section 6 that contain trade secrets or confidential business or financial information, the disclosure of which would harm the competitive position of the person submitting such information shall be confidential, and, except as authorized by this section, no officer or employee, or former officer or employee, of the United States shall disclose any such confidential information, obtained by him in any manner in connection with his service as such an officer or employee.

"(b) DISCLOSURE TO ATTORNEY GENERAL OR COMMISSION.—Whenever the Secretary believes that an applicant may be eligible for a certificate, or has issued a certificate to an association or export trading company, he shall promptly make available all materials filed by the applicant, association or export trading company, including applications and supplements thereto, reports of material changes, applications for amendments and annual reports, and information derived therefrom, to the Attorney General or Commission, or any employee or officer thereof, for official use in connection with an investigation or judicial or administrative proceeding under this Act or the antitrust laws to which the United States or the Commission is or may be a party. Such information may only be disclosed by the Secretary upon a prior certification that the information will be maintained in confidence and will only be used for such official law enforcement purposes.

"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH UNITED STATES OBLIGATIONS.

"At such time as the United States undertakes binding international obligations by treaty or statute, to the extent that the operations of any export trade association or export trading company, certified under this Act, are inconsistent with such international obligations, the Secretary may require the association or export trading company to modify its respective operations, and in so doing afford the association or export trading company a reasonable opportunity to comply therewith, so as to be consistent with such international obligations.

"SEC. 11. REGULATIONS.

"The Secretary, after consultation with the Attorney General and the Commission, shall promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

"SEC. 12. TASK FORCE STUDY.

"Seven years after the date of enactment of the Export Trade Association Act of 1980, the President shall appoint, by and with the advice and consent of the Senate, a task force to examine the effect of the operation of this Act on domestic competition and on United States international trade and to recommend either continuation, revision, or termination of the Webb-Pomerene Act. The task force shall have one year to conduct its study and to make its recommendations to the President.".

(b) REDESIGNATION OF SECTION 6.—The Act is amended—

(1) by striking out "SEC. 6." in section 6 (15 U.S.C. 66), and

(2) by inserting immediately before such section the following:

"SEC. 13. SHORT TITLE.".

TITLE III—SENATE FUNDING

SEC. 301. In the fiscal year beginning October 1, 1980, the aggregate amount of funds made available to the Senate shall not exceed 90 per centum of the aggregate amount of the funds made available for such purposes for the fiscal year beginning on October 1, 1979.

Mr. STEVENSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DISABLED VETERANS REHABILITATION ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, what is the next order of business?

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1188, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 1188) to improve and modernize the vocational rehabilitation program provided service-disabled veterans under chapter 31 of title 38, United States Code, and for other purposes.

DEPARTMENT OF THE TREASURY INTERNATIONAL AFFAIRS AUTHORIZATIONS, 1981

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the pending bill be temporarily laid aside and that the Senate proceed to the consideration of Calendar No. 816.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

needed. It is the most direct because the reinvestment in new issue stock represents instantaneous formation of new capital. It is the most closely targeted because it represents a rifle shot which is 100-percent effective in producing new capital to capital intensive companies having an urgent need for such common stock capital to finance new facilities. It is most cost effective since it will provide a substantial input in new capital formation and new capital investment while involving a modest or nonexistent revenue loss.

Mr. President, while my proposal in general aids businesses badly in need of capital, it represents a tax cut for the individual taxpayer. It is the shareholder and not the corporation which receives the tax benefit under my proposal. Further, the benefits are to the small shareholder. For example, analysis of the participants in the General Telephone plan indicate that over 84 percent of the stockholders participating in that plan own less than 100 shares and that some 94 percent of the participants hold less than 200 shares.

In addition to providing direct substantial and immediate support for the formation of new equity, adoption of my proposal will: Reduce the double taxation on dividend income by eliminating the tax at the shareholder level when dividends are reinvested pursuant to a qualified plan and to encourage individual savings and thereby provide needed supplemental retirement income.

My proposal represents not only tax savings to the individual and needed capital to capital intensive industries, it also is a direct hit on the stagflation facing our Nation's economy today. A study by the firm of Robert R. Nathan Associates states that my proposal will increase national output by approximately $2.7 billion annually, increase business investment by about $1 billion annually and add about 50,000 jobs per year.●

By Mr. BENTSEN:

S. 142. A bill to increase the amount of the exemption of certain interest and dividend income from taxation, and to make permanent the exemption of interest from taxation; to the Committee on Finance.

SMALL SAVERS

● Mr. BENTSEN. Mr. President, I am today introducing legislation to increase the amount of the exemption of certain interest on dividend income from $200—$400 in the case of a joint return—to $1,000 and $2,000 respectfully and to make this exemption a permanent part of the Internal Revenue Code.

The 96th Congress adopted the Bentsen small saver provision. That provision for the first time excluded a limited amount of interest income from tax. My proposal today will increase the amount of interest excluded from income and make that provision permanent.

Mr. President, for more than 3 years now I have maintained that tax cuts, properly structured and targeted, need not be inflationary. One of the most effective ways to combat inflation in our America, rejuvenate productivity, increase capital available for investment, and stimulate the supply side of our economy is to eliminate the bias against savings and investment that has contributed so significantly to our current economic difficulties.

Due to inflation, individuals actually receive a negative rate of return on savings accounts. A tax on the interest received further penalizes the consumer who has already been hurt by inflation. The money deposited in a savings account has already been taxed at the time the individual earned the income. A second tax can be harsh.

My proposal will replace the stick of double taxation with a carrot for incentives for savings and investment. It will encourage millions of small savers to invest in the future of America. It will permit millions of senior citizens living on fixed incomes to cope more efficiently in an era of double-digit inflation.

The need for this proposal is clear. The United States has one of the poorest records of savings and investment when compared to other industrialized nations. Americans currently save only 4.1 percent of disposable income, the lowest figure in 28 years. The British, by comparison, save at a rate of 6.6 percent, the French at 13.1 percent, the West Germans at 13.2 percent and the Japanese at 25.3 percent. A study prepared by the Department of the Treasury indicates the total U.S. fixed investment as a share of national output between 1950 through 1973 was 17.5 percent. The U.S. figure ranks last among a group of major industrial nations. Our investment rate was 7.2 percentage points below the average commitment of the entire group. Even below that of Great Britain. Greater savings and investment will help boost productivity and reduce inflation.

This proposal would also increase the flow of capital to savings and loan associations and provide a more stable source of funds for homebuilding. Efforts must be taken to reduce the severe fluctuations in the housing industry.

Mr. President, I urge Congress to enact this important incentive for greater savings.●

By Mr. HEINZ (for himself, Mr. DANFORTH, Mr. BENTSEN, Mr. TSONGAS, Mr. RANDOLPH, Mr. CHAFEE, Mr. GLENN, Mr. EAST, Mr. BUMPERS, Mr. BOREN, Mr. HEFLIN, Mr. LUGAR, Mr. GOLDWATER, Mr. ABDNOR, Mr. BRADLEY, Mr. HATFIELD, Mr. BAUCUS, Mr. STAFFORD, Mr. GORTON, Mr. RUDMAN, Mr. JOHNSTON, Mr. SCHMITT, Mr. MELCHER, Mr. JEPSEN, Mr. SIMPSON, Mr. MATHIAS, Mr. DURENBERGER, Mr. DIXON, Mr. WALLOP, Mr. ARMSTRONG, Mr. SYMMS, Mr. DOLE, Mr. MATSUNAGA, Mr. MOYNIHAN, Mr. LONG, Mr. ROTH, Mr. WEICKER, Mr. EAGLETON, Mr. KASTEN, Mr. HUDDLESTON, Mr. SPECTER, Mr. LEVIN, Mr. PRESSLER, and Mr. COHEN):

S. 144. A bill to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally; to the Committee on Banking, Housing, and Urban Affairs.

EXPORT TRADING COMPANIES

Mr. HEINZ. Mr. President, this bill we are introducing today to promote the formation of export trading companies is the same, with only minor changes, as S. 2718 which passed the Senate last September 3 by a vote of 77 to 0. Unfortunately, the House did not take up S. 2718 last year, but we hope that prompt action by the Senate again this year will give the House ample time to fully consider the legislation and to act favorably on it.

Mr. President, this bill is the first serious attempt by Congress to remedy the dramatic competitive decline in the United States vis-a-vis our trading partners and our trading competitors.

It is the product of nearly 3 years of concerted effort by former Senator Stevenson and the International Finance Subcommittee, which I now chair, which has held hearings including witnesses from virtually every segment of our economy, from academics, from business people, from labor, from consumers, from exporters, from importers.

It represents, perhaps, the most carefully researched response to a national problem that I have seen in my nearly 10 years in legislative service.

And that problem is that we are faced with a situation in which our trade deficit is getting progressively worse. That is a serious problem, Mr. President, because it is through our earnings in exports that we pay our ever-increasing import bills, particularly the $90 billion a year for our oil imports.

We should be mightily concerned because, notwithstanding a burgeoning Federal budget deficit, estimated in this year of the balanced budget at some place between $50 and $60 billion, the sad fact is that our trade deficit, which is not between the American Government and our people, but between the American people and other foreign trading partners, could be nearly as large.

This fact—is a sign of the deep economic trouble this country is in.

I would be the first to admit that this legislation will not solve everyone of our trading problems. But it will at least bring us into the 20th century as far as international trade is concerned, and put us on a par with our trade competitors who have long been better organized and better structured for global competition.

With respect to trade opportunities, we approved the implementing legislation on the MTN more than a year ago and that was a major step toward breaking down the barriers to free and fair international trade.

However, it seems our trading competitors have taken far more advantage of those lessened barriers than we have and the fault, if it lies anyplace, lies with the Government here in Washington, D.C.

While it is a fault, perhaps, not of commission but of omission, it is nonetheless a problem that we believe must be remedied, and remedied promptly through the passage of the strongest possible bil

that we can get from this Congress and the incoming administration.

I believe that this legislation in its present form is such a bill. By opening the door to the establishment of export trading companies, it will break down the barriers that we have erected over the years to the creation of meaningful institutions to help us and our firms, our employees, and our employers, export.

There is something of an irony to the fact that the sixth largest exporter in the United States is a Japanese trading company. Where, we may ask, are all the American trading companies?

The answer is that while a few may exist on paper, in terms of structure and the ability to perform, the ability to get financing, or the ability to offer services, the answer is that American trading companies do not exist. With rare exceptions, they are here only in name.

That is why our trading companies legislation, which addresses many of the disincentives to the effective formation and operation of trading companies, is so important.

So perhaps in the future we will be able to displace as the No. 6 U.S. exporter the Mitsui Trading Co., and maybe we will have some American trading companies right up there in the top 5 and relegate the Mitsuis and the others to the bottom 100.

Mr. President, one particular area of debate about this bill, which I would like to touch on briefly, concerns the provision regarding bank participation in export trading companies.

Very simply, if we are to mobilize our small- and medium-sized manufacturers into exporting, we have to have what I can best describe as strong and full service trading companies. That means financing, that means the participation of some kind of financial institutions, that means the participation, therefore, in our society of both banks and bank holding companies.

Without them, we cannot have successful, financially strong, trading companies unless we want to continue to operate with one or both arms tied behind us.

The Commerce Department has estimated that there are about 20,000 small- and medium-sized firms that could be exporting but are not. Export trading companies will facilitate the entry of these firms into world trade. The United States neglects billions of dollars in potential export business each year because small- and medium-sized producers cannot afford the cost and risks involved in fully developing opportunities to market their products and services abroad.

It is all too easy to explain away the nonparticipation of these 20,000 small- and medium-sized firms identified by the Commerce Department, who could export profitably but do not. The conventional wisdom is that these firms have compared the large, rich domestic market with the risky international environment and decided not to take chances, or that they have simply refused to make the effort necessary to find the right export management firm to handle the international segment of their business. These explanations may well be valid. But they do not justify inaction on the part of the administration or Congress. I believe that, in this case, we must go beyond the conventional wisdom and create an environment in which the export market actually becomes an attractive alternative to the expansion of domestic market opportunities. Export trading companies can do just that.

Obviously, we are not going to solve this problem overnight. But every successful program of trade promotion is a step in the right direction. Small- and medium-sized businesses have too long been excluded from the role in our Nation's export picture which similar sized firms play for our trade competitors. Where our competitors have incentives and official credit and promotion programs, we have antitrust barriers and structural impediments to surmount before our firms can even begin to compete.

This bill will help to overcome some of those barriers by encouraging the development of intermediaries to provide the marketing and financial tools necessary to help smaller business, while at the same time helping them to benefit from economies of scale and diffusion of risk.

The Japanese Shoshoga, or trading company, has strong financial ties with financial institutions, and this lesson has not been lost on many other countries. The same is true for the Europeans and Brazilians, and all the other countries that have strong trading companies.

Without question, if we want to get into the 20th century where exporting is concerned, we must have trading companies with financial muscle.

Second, there is, to me, some irony in the fact that if we do not permit American banks and bank holding companies to have necessary financial participation in American trading companies, they would be in the unique position of being able to own outright foreign trading companies in other countries, as they do now, but not here. We would be putting our American banks in the strange position of undercutting and weakening our trade surplus by the successful operation of trading companies in Brazil, Europe, and other places, owned or substantially owned by them, while prohibiting them from strengthening our trading position by permitting them to do the same thing here that they are permitted to do overseas.

Allowing the participation of the banking organizations in export trading companies does involve some risk but the provisions of this bill limit their financial exposure to such a degree that the risk is quite minimal if not as close to nonexistent as can be obtained in an uncertain world. At this point, is it not more important to ask, what do we risk if we do not act to increase our exports? That risk is known. Our trade deficit will continue to grow.

In evaluating the relative risks involved in an enterprise, we should consider all the possibilities. In this case, we must weight the risk to the banks of their involvement against the benefits to our economy which will be accrued by increased exports. The sponsors of this legislation believe that ETC's will significantly increase U.S. exports—particularly those of small- and medium-sized businesses—if they are adequately capitalized. At this point, the most effective way for ETC's to raise capital is to encourage banks to get into the business. If we enact legislation that will discourage the participation of banks in ETC's, we will have significantly decreased the probability that this legislation will be an effective vehicle with which to obtain the goal of increased exports, a goal upon which we all agree.

This bill can substantially and permanently expand U.S. exports, particularly by small- and medium-sized firms that do not export at present. It would revise Government policies which have tended to discourage formation of U.S. export trading companies in the past. It aims at long-term improvement in America's trade posture through improved export intermediation by private American export traders.

Title I would: First, increase the financial leverage of all exporters by directing the Export-Import Bank to develop an improved guarantee program to support commercial loans to U.S. exporters; Second, direct the Secretary of Commerce to promote export trading companies by providing information on such companies to U.S. producers; Third, permit banks to make limited investment in export trading companies (such investments could not exceed 5 percent of the banking capital and all controlling investments and all investments over $10 million would be subject to prior approval and conditions imposed by Federal bank regulatory agencies to insure the safety and soundness of banks and fair competition); Fourth, authorize additional appropriations to the Economic Development Administration and Small Business Administration to support increased loans and guarantees to enable expansion of U.S. exports, including exports through U.S. export trading companies.

Title II would revise the Webb-Pomerene Act of 1918 to clarify the anti-trust provisions applicable to export trade associations and export trading companies and provide a certification procedure which would enable such associations and companies to obtain anti-trust preclearance for specified export trade operations. The clearance procedure would facilitate exports by permitting firms to determine in advance exactly which export trade activities would be immune from anti-trust suit and which ones would not.

Earlier versions of this bill contained a third title which would extend the tax deferral available under the DISC (Domestic International Sales Corporation) provisions of the tax code to exports of export trading companies, including exports of services. It would also allow in same cases the use of subpart S of the tax code (which permits certain pass-throughs to shareholders to closely held corporations). For jurisdictional reasons we have decided not to include title III in this year's bill and instead will soon be introducing a revised version of it separately. We remain committed to its enactment.

Mr. President, I urge my colleagues to

study this bill carefully, to weigh its enormous benefits against the risks of inaction, and then to join with me in supporting prompt committee action in reporting it and an overwhelming vote in the Senate in favor of it. I ask that the text of the bill be printed at this point in the RECORD, along with a brief summary of its provisions and congressional action on it last year.

There being no objection, the bill and the summary were ordered to be printed in the RECORD, as follows:

S. 144

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXPORT TRADING COMPANIES

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1981".

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

(2) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

(4) export trade intermediaries, such as trading companies, can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant portion of potential United States exporters);

(6) State and local government activities which initiate, facilitate, expand export of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(7) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations; and

(8) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services, particularly by small, medium-size and minority concerns, by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods in the United States or services produced in the United States, produced, and exported, or in the course of being exported, from the United States to any foreign nation;

(2) the term "goods produced in the United States" means tangible property manufactured, produced, grown, or extracted in the United States, the cost of the imported raw materials and components thereof shall not exceed 50 per centum of the sales price;

(3) the term "services produced in the United States" includes, but is not limited to accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services, not less than 50 per centum of the sales or billings of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(5) the term "export trading company" means a company, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for the purposes of—

(A) exporting goods and services produced in the United States; and

(B) facilitating the exportation of goods and services produced in the United States by unaffiliated persons by providing one or more export trade services;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(7) the term "Secretary" means the Secretary of Commerce; and

(8) the term "company" means any corporation, partnership, association; or similar organization, whether operated for profit or as a nonprofit organization.

(b) The Secretary is authorized, by regulation, to further define such terms consistent with this section.

FUNCTIONS OF THE SECRETARY OF COMMERCE

SEC. 104. The Secretary shall promote and encourage the formation and operation of export trading comoanies by providing information and advice to interested persons and by facilitating contact between producers of exportable goods and services and firms offering export trade services.

OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS, BANK HOLDING COMPANIES, AND INTERNATIONAL BANKING CORPORATIONS

SEC. 105. (a) For the purpose of this section—

(1) the term "banking organization" means any State bank, national bank, Federal savings bank, bankers' bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(2) the term "State bank" means any bank which is incorporated under the laws of any State, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, or any bank (except a national bank) which is operating under the Code of Law for the District of Columbia (hereinafter referred to as a "District bank");

(3) the term "State member bank" means any State bank, including a bankers' bank, which is a member of the Federal Reserve System;

(4) the term "State nonmember insured bank" means any State bank, including a bankers' bank, which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(5) the term "bankers bank" means any bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks (except to the extent State law requires directors' qualifying shares) and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors, or employees;

(6) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(7) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(8) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(9) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank or any District bank;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank except a District bank; and

(D) the Federal Home Loan Bank Board with respect to a Federal savings bank.

In any situation where the banking organization holding or making an investment in an export trading company is a subsidiary of another banking organization which is subject to the jurisdiction of another agency, and some form of agency approval or notification is required, such approval or notification need only be obtained from or made to, as the case may be, the appropriate Federal banking agency for the banking organization making or holding the investment in the export trading company.

(10) the term "capital and surplus" means paid in and unimpaired capital and surplus, and includes undivided profits;

(11) an "affiliate" of a banking organization or export trading company is a person who controls, is controlled by, or is under common control with such banking organization or export trading company;

(12) the terms "control" and "subsidiary" shall have the same meaning assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956; and

(13) for the purposes of this section, the term "export trading company" means a company which does business under the laws of the United States or any State and which is exclusively engaged in activities related to international trade, whether operated for profit or as a nonprofit organization: *Provided, however,* That any such company must also either meet the definition of export trading company in section 103(a)(5) of this Act, or be organized and operated principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this Act: *Provided, further,* That any such company, for purposes of this section, (A) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that its banking organization investor may do so under ap-

plicable Federal and State banking law and regulations, and (B) may not engage in manufacturing or agricultural production activities.

(b)(1) Notwithstanding any prohibition, restriction, limitation, condition, or requirement of any law applicable only to banking organizations, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency, if such investment does not cause an export trading company to become a subsidiary of the investing banking organization; and

(B) make investments in excess of an aggregate amount of $10,000,000 in one or more export trading companies, or make any investment or take any other action which causes an export trading company to become a subsidiary of the investing banking organization of which will cause more than 50 per centum of the voting stock of an export trading company to be owned or controlled by banking organizations, only with the prior approval of the appropriate Federal banking agency.

Any banking organization which makes an investment under authority of clause (A) of the preceding sentence shall promptly notify the appropriate Federal banking agency of such investment and shall file such reports on such investment as such agency may require. If, after receipt of any such notification, the appropriate Federal banking agency determines, after notice and opportunity for hearing, that the export trading company is a subsidiary of the investing banking organization, it shall have authority to disapprove the investment or impose conditions on such investment under authority of subsection (d). In furtherance of such authority, the appropriate Federal banking agency may require divestiture of any voting stock or other evidences of ownership previously acquired, and may impose conditions necessary for the termination of any controlling relationship.

(2) If a banking organization proposes to make any investment or engage in any activity included within the following two subparagraphs, it must give the appropriate Federal banking agency ninety days prior written notice before it makes such investment or engages in such activity:

(A) any additional investment in an export trading company subsidiary; or

(B) the engagement by any export trading company subsidiary in any line of activity, including specifically the taking of title to goods, wares, merchandise, or commodities, if such activity was not disclosed in any prior application for approval.

During the notification period provided under this paragraph, the appropriate Federal banking agency may, by written notice, disapprove the proposed investment or activity or impose conditions on such investment or activity under authority of subsection (d). An additional investment or activity covered by this paragraph may be made or engaged in, as the case may be, prior to the expiration of the notification period if the appropriate Federal banking agency issues written notice of its intent not to disapprove.

(3) In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1)(B) of this subsection within a period of one hundred and twenty days, which period begins on the date the application has been accepted for processing by the appropriate Federal banking agency, the application shall be deemed to have been granted. In the event of the failure of the appropriate Federal banking agency either to disapprove or to impose conditions on any investment or activity subject to the prior notification requirements of paragraph (2) of this subsection within the sixty-day period provided therein, such period beginning on the date the notification has been received by the appropriate Federal banking agency, such investment or activity may be made or engaged in, as the case may be, any time after the expiration of such period.

(c) The following limitations apply to export trading companies and the investments in such companies by banking organizations:

(1) The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership.

(2) The total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of credit by the banking organization and its direct and indirect subsidiaries to such export trading company shall not exceed 10 per centum of the banking organization's capital and surplus.

(3) A banking organization that owns any voting stock or other evidences of ownership of an export trading company shall terminate its ownership of such stock if the export trading company takes positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of its business operations.

(4) No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(d)(1) In the case of every application under subsection (b)(1)(B) of this section, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns (with special emphasis on small, medium-size and minority concerns), and to improving United States competitiveness in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under subsection (b)(1)(B) if it finds that the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(2) In approving any application submitted under subsection (b)(1)(B), the appropriate Federal banking agency may impose such conditions which, under the circumstances of such case, it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices. With respect to the taking of title to goods, wares, merchandise, or commodities by any export trading company subsidiary of a banking organization, the appropriate Federal banking agencies may, by order, regulation, or guidelines, establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. In particular, the appropriate Federal banking agencies may establish inventory-to-capital ratios, based on the capital of the export trading company subsidiary, for those circumstances in which the export trading company subsidiary may bear a market risk on inventory held.

(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal banking agency must give due consideration to the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company, and the identity, character, and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions or set standards for the taking of title which unnecessarily disadvantage, restrict or limit export trading companies in competing in world markets or in achieving the purposes of section 102 of this Act. In particular, in setting standards for the taking of title under the preceding paragraph (2), the appropriate Federal banking agencies shall give special weight to the need to take title in certain kinds of trade transactions, such as international barter transactions.

(4) Notwithstanding any other provision of this Act, the appropriate Federal banking agency may, whenever it has reasonable cause to believe that the ownership or control of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the banking organization, after due notice and opportunity for hearing, to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its investment in the export trading company.

(5) On or before two years after enactment of this Act, the appropriate Federal banking agencies shall jointly report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance, and Urban Affairs of the House of Representatives their recommendations with respect to the implementation of this section, their recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-sized and minority business concerns, and their recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

(e)(1) Any party aggrieved by an order of an appropriate Federal banking agency under this section may obtain a review of such order in the United States court of appeals within any circuit wherein such organization has its principal place of business, or in the court of appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the order was based. The court shall set aside any order found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in ac-

cordance with law; (B) contrary to constitutional right, power, privilege or immunity; or, (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (D) without observance of procedure required by law. Except for violations of subsection (b)(3) or this section, the court shall remand for further consideration by the appropriate Federal banking agency any order set aside solely for procedural errors and may remand for further consideration by the appropriate Federal banking agency any order set aside for substantive errors. Upon remand, the appropriate Federal banking agency shall have no more than sixty days from date of issuance of the court's order to cure any procedural error or reconsider its prior order. If the agency fails to act within this period, the application or other matter subject to review shall be deemed to have been granted as a matter of law.

(f)(1) The appropriate Federal banking agencies are authorized and empowered to issue such rules, regulations, and orders, to require such reports, to delegate such functions, and to conduct such examinations of subsidiary export trading companies, as each of them may deem necessary in order to perform their respective duties and functions under this section and to administer and carry out the provisions and purposes of this section and prevent evasions thereof.

(2) In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this section may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency defined in that Act.

(g) Nothing in this section shall at any time prevent any State from adopting a law prohibiting banks chartered under the laws of such State from investing in export trading companies or applying conditions, limitations, or restrictions on investments by banks chartered under the laws of such State in export trading companies in addition to any conditions, limitations, or restrictions provided under this section.

INITIAL INVESTMENTS AND OPERATING EXPENSES

SEC. 105. (a) The Economic Development Administration and the Small Business Administration are directed, in their consideration of applications by export trading companies for loans and guarantees, and operating grants to nonprofit organizations, including applications to make new investments related to the export of goods or services produced in the United States and to meet operating expenses, to give special weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small, medium-size and minority businesses or agricultural concerns in the export market.

(b) There are authorized to be appropriated as necessary to meet the purposes of this section, $20,000,000 for each fiscal year, 1981, 1982, 1983, 1984, and 1985. Amounts appropriated pursuant to the authority of this subsection shall be in addition to amounts appropriated under the authority of other Acts.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 107. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other private creditors to export trading companies as defined in section 103(5) of this Act, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size and minority businesses of agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

TITLE II—EXPORT TRADE ASSOCIATIONS

SHORT TITLE

SEC. 201. This title may be cited as the "Export Trade Association Act of 1981".

FINDINGS; DECLARATION OF PURPOSE

SEC. 202. (a) FINDINGS.—The Congress finds and declares that—

(1) the exports of the American economy are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every $7 of total United States goods produced;

(2) exports will play an even larger role in the United States economy in the future in the face of severe competition from foreign government-owned and subsidized commercial entities;

(3) between 1968 and 1977 the United States share of total world exports fell from 19 per centum to 13 per centum;

(4) trade deficits contribute to the decline of the dollar on international currency markets, fueling inflation at home;

(5) service-related industries are vital to the well-being of the American economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 percentum of the Nation's gross national product, and represent a small but rapidly rising percentage of United States international trade;

(6) small and medium-sized firms are prime beneficiaries of joint exporting, through pooling of technical expertise, help in achieving economies of scale, and assistance in competing effectively in foreign markets; and

(7) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports.

(b) PURPOSE.—It is the purpose of this Act to encourage American exports by establishing an office within the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

DEFINITIONS

SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

"SECTION 1. DEFINITIONS.

"As used in this Act—

"(1) EXPORT TRADE.—The term 'export trade' means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported from the United States or any territory thereof to any foreign nation.

"(2) SERVICE.—The term 'service' means intangible economic output, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, and communication services.

"(3) EXPORT TRADE ACTIVITIES.—The term 'export trade activities' means activities or agreements in the course of export trade.

"(4) METHODS OF OPERATION.—The term 'methods of operation' means the methods by which an association or export trading company conducts or proposes to conduct export trade.

"(5) TRADE WITHIN THE UNITED STATES.—The term 'trade within the United States' whenever used in this Act means trade or commerce among the several States or in any territory of the United States, or in the District of Columbia, or between any such territory and another, or between any such territory or territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"(6) ASSOCIATION.—The term 'association' means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations whether operated for profit or organized as nonprofit corporations, which are created under and exist pursuant to the laws of any State or of the United States.

"(7) EXPORT TRADING COMPANY.—The term 'export trading company' means an export trading company as defined in section 103(5) of the Export Trading Company Act of 1980.

"(8) ANTITRUST LAWS.—The term 'antitrust laws' means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12), sections 5 and 6 of the Federal Trade Commission Act (15 U.S.C. 45, 46), and any State antitrust or unfair competition law.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(10) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(11) COMMISSION.—The term 'Commission' means the Federal Trade Commission.".

ANTITRUST EXEMPTION

SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out section 2 (15 U.S.C. 62) and inserting in lieu thereof the following:

"SEC. 2. EXEMPTION FROM ANTITRUST LAWS

"(a) ELIGIBILITY.—The export trade, export trade activities, and methods of operation of any association, entered in to the sole purpose of engaging in export trade, and engaged in or proposed to be engaged in such export trade, and the export trade, export trade activities and methods of operation of any export trading company, that—

"(1) serve to preserve to promote export trade;

"(2) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association or export trading company;

"(3) do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(4) do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(5) do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members; and

"(6) do not constitute trade or commerce

in the licensing of patents, technology, trademarks, or knowhow, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or export trading company or its members shall, when certified according to the procedures set forth in this Act, be eligible for the exemption provided in subsection (b).

"(b) EXEMPTION.—An association or an export trading company and its members are exempt from the operation of the antitrust laws with respect to their export trade, export trade activities and methods of operation that are specified in a certificate issued according to the procedures set forth in this Act, carried out in conformity with the provisions, terms, and conditions prescribed in such certificate and engaged in during the period in which such certificate is in effect. The subsequent revocation or invalidation in whole or in part of such certificate shall not render an association or its members or an export trading company or its members, liable under the antitrust laws for such export trade, export trade activities, or methods of operation engaged in during such period.

"(c) DISAGREEMENT OF ATTORNEY GENERAL OR COMMISSION.—Whenever, pursuant to section 4(b)(1) of this Act, the Attorney General or Commission has formally advised the Secretary of disagreement with the determination to issue a proposed certificate, and the Secretary has nonetheless issued such proposed certificate or an amended certificate, the exemption provided by this section shall not be effective until thirty days after the issuance of such certificate.".

AMENDMENT OF SECTION 3

SEC. 205. (a) CONFORMING CHANGES IN STYLE.—The Webb-Pomerene Act (15 U.S.C. 61–66) is amended—

(1) by inserting immediately before section 3 (15 U.S.C. 63) the following:

"SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCIATIONS PERMITTED.",

(2) by striking out "SEC. 3. That nothing" in section 3 and inserting in lieu thereof "Nothing".

ADMINISTRATION: ENFORCEMENT; REPORTS

SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out sections 4 and 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the following sections:

"SEC. 4. CERTIFICATION.

"(a) PROCEDURE FOR APPLICATION.—Any association or export trading company seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

"(1) The name of the association or export trading company.

"(2) The location of all of the offices or places of business of the association or export trading company in the United States and abroad.

"(3) The names and addresses of all of the officers, stockholders, and members of the association or export trading company.

"(4) A copy of the certificate or articles of incorporation and bylaws, if the association or export trading company is a corporation; or a copy of the articles, partnership, joint venture, or other agreement or contract under which the association or export trading company conducts or proposes to conduct its export trade activities or contract of association, if the association or export trading company is unincorporated.

"(5) A description of the goods, wares, merchandise, or services which the association or export trading company or their members export or propose to export.

"(6) A description of the domestic and international conditions, circumstances, and factors which show that the association or export trading company and its activities will serve a specified need in promoting the export trade of the described goods, wares, merchandise, or services.

"(7) The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods, wares, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

"(8) The names of all countries where export trade in the described goods, wares, merchandise, or services is conducted or proposed to be conducted by or through the association or export trading company.

"(9) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association or export trading company; the relation of the association or export trading company to other associations, corporations, partnerships, and individuals; and competition or potential competition, and effects of the association or export trading company thereon. The Secretary may request such information as part of an initial application or as a necessary supplement thereto. The Secretary may not request information under this paragraph which is not reasonably available to the person making application or which is not necessary for certification of the prospective association or export trading company.

"(b) ISSUANCE OF CERTIFICATE.—

"(1) NINETY-DAY PERIOD. The Secretary shall issue a certificate to an association or export trading company within ninety days after receiving the application for certification or necessary supplement thereto if the Secretary, after consultation with the Attorney General and Commission, determines that the association and, its export trade, export trade activities and methods of operation, or export trading company, and its export trade, export trade activities and methods of operation meet the requirements of section 2 of this Act and will serve a specified need in promoting the export trade of the goods, wares, merchandise, or services described in the application for certification. The certificate shall specify the permissible export trade, export trade activities and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary deems necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that he proposes to issue. The Attorney General or Commission may, within fifteen days thereafter, give written notice to the Secretary of an intent to offer advice on the determination. The Attorney General or Commission may, after giving such written notice and within forty-five days of the time the Secretary has delivered a copy of a proposed certificate, formally advise the Secretary and the petitioning association or export trading company of disagreement with the Secretary's determination. The Secretary shall not issue any certificate prior to the expiration of such forty-five day period unless he has (A) received no notice of intent to offer advice by the Attorney General or the Commission within fifteen days after delivering a copy of a proposed certificate, or (B) received any noticed formal advice of disagreement or written confirmation that no formal disagreement will be transmitted from the Attorney General and the Commission. After the forty-five day period or, if no notice of intent to offer advice has been given, after the fifteen-day period, the Secretary shall either issue the proposed certificate, issue an amended certificate, or deny the application. Upon agreement of the applicant, the Secretary may delay taking action for not more than thirty additional days after the forty-five day period. Before offering advice on a proposed certification, the Attorney General and Commission shall consult in an effort to avoid, wherever possible, having both agencies offer advice on any application.

"(2) EXPEDITED CERTIFICATION.—In those instances where the temporary nature of the export trade activities, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of the association or export trading company which have a significant impact on its export trade, make the 90-day period for application approval described in paragraph (1) of this subsection, or an amended application approval as provided in subsection (c) of this section, impractical for the association or export trading company seeking certification, such association or export trading company may request and may receive expedited action on its application for certification.

"(3) AUTOMATIC CERTIFICATION FOR EXISTING ASSOCIATIONS.—Any association registered with the Federal Trade Commission under this Act as of April 3, 1980, may file with the Secretary an application for automatic certification of any export trade, export trade activities, and methods of operation in which it was engaged prior to enactment of the Export Trade Association Act of 1980. Any such application must be filed within 180 days after the date of enactment of such Act and shall be acted upon by the Secretary in accordance with the procedures provided by this section. The Secretary shall issue to the association a certificate specifying the permissible export trade, export trade activities, and methods of operation that he determines are shown by the application (including any necessary supplement thereto), on its face, to be eligible for certification under this Act, and including any terms and conditions the Secretary deems necessary to comply with the requirements of section 2(a) of this Act, unless the Secretary possesses information clearly indicating that the requirements of section 2(a) are not met.

"(4) APPEAL OF DETERMINATION.—If the Secretary determines not to issue a certificate to an association or export trading company which has submitted an application or an amended application for certification, then he shall—

"(A) notify the association or export trading company of his determination and the reasons for his determination, and

"(B) upon request made by the association or export trading company afford it an opportunity for a hearing with respect to that determination in accordance with section 557 of title 5, United States Code.

"(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF CERTIFICATE.—Whenever there is a material change in the membership, export trade, export trade activities, or methods of operation, of an association or export trading company then it shall report such change to the Secretary and may apply to the Secretary for an amendment of its certificate. Any application for an amendment to a certificate shall set forth the requested amendment of the certificate and the reasons for the requested amendment. Any request for the amendment of a certificate shall be treated in the same manner as an original application for a certificate. If the request is filed within thirty days after a material

change which requires the amendment, and if the requested amendment is approved, then there shall be no interruption in the period for which the certificate is in effect.

"(d) AMENDMENT OR REVOCATION OF CERTIFICATE BY SECRETARY.—After notifying the association or export trading company involved and after an opportunity for hearing pursuant to section 554 of title 5, United States Code, the Secretary, on his own initiative—

"(1) may require that the organization or operation of the association or export trading company be modified to correspond with its certification, or

"(2) shall, upon a determination that the export trade, export trade activities or methods of operation of the association or export trading company no longer meet the requirements of section 2 of this Act, revoke the certificate or make such amendments as may be necessary to satisfy the requirements of such section.

"(e) ACTION FOR INVALIDATION OF CERTIFICATE BY ATTORNEY GENERAL OR COMMISSION.—

"(1) The Attorney General or the Commission may bring an action against an association or export trading company or its members to invalidate, in whole or in part, its certificate on the grounds that the export trade, export trade activities or methods of operation of the association or export trading company fail or have failed to meet the requirements of section 2 of this Act. Except in the case of an action brought during the period before an antitrust exemption becomes effective, as provided for in section 2(c), Attorney General or Commission shall notify any association or export trading company or member thereof, against which it intends to bring an action for invalidation thirty days in advance, as to its intent to file an action under this subsection. The district court shall consider any issues presented in any such action de novo and if it finds that the requirements of section 2 are not met, it shall issue an order declaring the certificate invalid or any other order necessary to effectuate the purposes of this Act and the requirements of section 2.

"(2) Any action brought under this subsection shall be considered an action described in section 1337 of title 28, United States Code. Pending any such action which was brought during the period any exemption is held in abeyance pursuant to section 2(c) of this Act, the court may make such temporary restraining order or prohibition as shall be deemed just in the premises.

"(3) No person other than the Attorney General or Commission shall have standing to bring an action against an association or export trading company or their respective members for failure of the association or export trading company or their respective export trade, export trade activities or methods of operation to meet the eligibility requirements of section 2 of this Act.

"(f) COMPLIANCE WITH OTHER LAWS.—Each association and each export trading company and any subsidiary thereof shall comply with United States export control laws pertaining to the export or transshipment of any good on the Commodity Control List to controlled countries. Such laws shall be complied with before actual shipment.

"SEC. 5. GUIDELINES.

"(a) INITIAL PROPOSED GUIDELINES.—Within ninety days after the enactment of the Export Trade Association Act of 1980, the Secretary, after consultation with the Attorney General, and the Commission shall publish proposed guidelines for purposes of determining whether export trade, export trade activities and methods of operation of an association or export trading company will meet the requirements of section 2 of this Act.

"(b) PUBLIC COMMENT PERIOD.—Following publication of the proposed guidelines, and any proposed revision of guidelines, interested parties shall have thirty days to comment on the proposed guidelines. The Secretary shall review the comments and, after consultation with the Attorney General, and Commission, publish final guidelines within thirty days after the last day on which comments may be made under the preceding sentence.

"(c) PERIODIC REVISION.—After publication of the final guidelines, the Secretary shall periodically review the guidelines and, after consultation with the Attorney General, and the Commission, propose revisions as needed.

"(d) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—The promulgation of guidelines under this section shall not be considered rulemaking for purposes of subchapter II of chapter 5 of title 5, United States Code, and section 553 of such title shall not apply to their promulgation.

"SEC. 6. ANNUAL REPORTS.

"Every certified association or export trading company shall submit to the Secretary an annual report, in such form and at such time as he may require, which report updates where necessary the information described by section 4(a) of this Act.

"SEC. 7. OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE.

"The Secretary shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies through the use of provisions of this Act in a manner consistent with this Act. The Office of Export Trade in the Department of Commerce shall report to the congressional committees of appropriate jurisdiction on an annual basis, all East-West trade transactions requiring validated licenses, and any other relevant information on the role of U.S. export trading companies or subsidiaries thereof in the East-West trade.

"SEC. 8. TEMPORARY ANTITRUST EXEMPTION FOR EXISTING ASSOCIATIONS.

"(a) ELIGIBILITY.—To be eligible for the antitrust exemption provided by this section, an association must have been registered with the Federal Trade Commission under this Act on April 3, 1980.

"(b) DURATION.—The antitrust exemption provided by this section shall extend only to the existence of an eligible association, and to agreements made and acts done by such association, prior to one hundred and eighty days after the date of enactment of the Export Trade Association Act of 1980, or, in the event that an eligible association files an application for certification pursuant to section 4 of this Act during such one hundred and eighty days, prior to the Secretary's determination on such application becoming final.

"(c) EXEMPTION.—Subject to the limitations in subsections (a) and (b), nothing contained in sections 1 to 7 of the Sherman Act shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *Provided*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

"SEC. 9. CONFIDENTIALITY OF APPLICATION AND ANNUAL REPORT INFORMATION.

"(a) GENERAL RULE.—Portions of applications made under section 4, including amendments to such applications, and annual reports made under section 6 that contain trade secrets or confidential business or financial information, the disclosure of which would harm the competitive position of the person submitting such information shall be confidential, and, except as authorized by this section, no officer or employee, or former officer or employee, of the United States shall disclose any such confidential information obtained by him in any manner in connection with his service as such an officer or employee.

"(b) DISCLOSURE TO ATTORNEY GENERAL AND COMMISSION.—Whenever the Secretary believes that an applicant may be eligible for a certificate, or has issued a certificate to an association or export trading company, shall promptly make available all materials filed by the applicant, association or export trading company, including applications, supplements thereto, reports of material changes, applications for amendments, annual reports, and information derived therefrom, to the Attorney General or Commission, or any employee or officer thereof, for official use in connection with an investigation or judicial or administrative proceeding under this Act or the antitrust laws in which the United States or the Commission is or may be a party. Such information may only be disclosed by the Secretary upon a prior certification that the information will be maintained in confidence and will only be used for such official law enforcement purposes.

"SEC. 10. MODIFICATION OF ASSOCIATION TO COMPLY WITH UNITED STATES OBLIGATIONS.

"At such time as the United States undertakes binding international obligations by treaty or statute, to the extent that the operations of any export trade association or export trading company, certified under this Act, are inconsistent with such international obligations, the Secretary may require the association or export trading company to modify its respective operations, and in so doing afford the association or export trading company a reasonable opportunity to comply therewith, so as to be consistent with such international obligations.

"SEC. 11. REGULATIONS.

"The Secretary, after consultation with the Attorney General and the Commission, shall promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

"SEC. 12. TASK FORCE STUDY.

"Seven years after the date of enactment of the Export Trade Association Act of 1980 the President shall appoint, by and with the advice and consent of the Senate, a task force to examine the effect of the operation of this Act on domestic competition and on United States international trade and to recommend either continuation, revision, or termination of the Webb-Pomerene Act. The task force shall have one year to conduct its study and to make its recommendations to the President.".

(b) REDESIGNATION OF SECTION 6.—The Act is amended—

(1) by striking out "SEC. 6." in section (15 U.S.C. 66), and

(2) by inserting immediately before such section the following:

"SEC. 13. SHORT TITLE.".

SUMMARY OF THE EXPORT TRADING COMPANY ACT

Title I of S. 2718 would: (1) increase the financial leverage of all exporters by directing the Export-Import Bank to develop an improved guarantee program to support commercial loans to United States exporters; (2) direct the Secretary of Commerce to promote export trading companies by providing information on such companies to U.S. producers; (3) permit banks to make limited in-

vestments in export trading companies (such investments could not exceed 5 percent of the banking capital and all controlling investments and all investments over $10,000,000 would be subject to prior approval and conditions imposed by Federal bank regulatory agencies to ensure the safety and soundness of banks and fair competition); (4) authorize additional appropriations to the Economic Development Administration and Small Business Administration to support increased loans and guarantees to enable expansion of U.S. exports, including exports through United States export trading companies.

Title II would revise the Webb-Pomerene Act of 1918 to clarify antitrust provisions applicable to export trade associations and export trading companies and provide a certification procedure which would enable such associations and companies to obtain antitrust preclearance for specified export trade operations. The clearance procedure would facilitate exports by permitting firms to determine in advance exactly which export trade activities would be immune from antitrust suit and which ones would not.

Organizations which have supported the Export Trading Company Act: President's Export Council, the National Governors' Association, the U.S. Chamber of Commerce, the American Bankers Association, the Bankers Association for Foreign Trade, the National Forest Products Association, the National Association of Manufacturers, the American Association of Port Authorities, the Mining and Reclamation Council of America, the Emergency Committee for American Trade, the National Small Business Association, the American Textile Manufacturers Association, the Man-Made Fiber Producers Association, the American Apparel Manufacturers Association, the Scientific Apparatus Makers Association, the National Machine Tool Builders Association, the American Soybean Association, the Electronic Industries Association, the National Customs Brokers and Forwarders Association of America, the American League for Exports and Security Assistance, the American Electronics Association, the Business Roundtable, and many others.

Previous hearings on this legislation:

International Finance Subcommittee: September 17 and 18, 1979. March 17 and 18 and April 3, 1980.

Full Banking Committee: July 25, 1980.

Senate Floor debate: August 28, September 3, 1980.

Last year's bill (S. 2718) passed the Senate 77–0.

EXPORT TRADING COMPANY ACT OF 1981

Mr. DANFORTH. Mr. President, the United States needs to become an aggressive exporter of its goods and services. One need only look at our growing trade deficit to appreciate that our industries are losing the competitive battle within world markets.

For the first 70 years of the century our Nation had a positive trade balance with its trading partners. For the better part of this century U.S. industry was efficient, had innovative capacity, and was unexcelled in technological leadership. Today, the statistics and the outlook is not that encouraging. In 1977 the United States ran a $26.5 billion deficit, a $23.5 billion deficit the next year and a $25 billion deficit in 1979. Last year the projected trade deficit was to approach $30 billion. The economic stability of our Nation is being swiftly eroded.

In the last two decades the U.S. share of free world exports declined from 15 to 11 percent. Within the last 5 years our major competitors have managed to increase real exports by 4 percent a year, while the value of U.S. exports, adjusted for inflation, has shown little if no growth. Looking at the relative importance of exports as a percentage of GNP, U.S. exports account for approximately 7 percent of GNP in contrast to Japan where exports account for 14 percent of GNP and for 22 percent of GNP in Germany. Something has to be done to spur U.S. exports.

Mr. President, the "Export Trading Company Act of 1981" is a step in that direction. The bill encourages and provides a framework within which export trading companies may be formed. The bill enables banking institutions to invest in export trading companies under specified and carefully regulated conditions. Further, the legislation would significantly amend the Webb-Pomerence Act of 1918 to clarify the antitrust provisions applicable to export trade associations and provide a certification procedure whereunder export trading companies and trade associations may receive antitrust clearance for specified export trade activities.

Mr. President, as its author, I would like to address my remarks to the antitrust provisions of the "Export Trading Company Act of 1981", specifically title II. Title II finds its origin S. 864, the "Export Trade Association Act of 1979" introduced by myself and Senators BENTSEN, CHAFEE, JAVITS, and MATHIAS on April 4, 1979 and later joined by Senator HEINZ. Hearings were held on S. 864, and other bills, on September 17 and 18, 1979 before the Subcommittee on International Finance of the Senate Committee on Banking, Housing and Urban Affairs. A revised version of S. 864 was introduced on February 26, 1980 as amendment No. 1674. Hearings on the revision were held on March 17 and 18, and April 3, 1980. On September 3 the Senate by a vote of 77 to 0 passed S. 2718, the predecessor to the legislation introduced today.

Before I address myself to the particulars of title II, I believe a brief historical background of the current law—the Webb-Pomerence Act of 1918 (15 United States Code, sections 61–66)—which title II amends will prove beneficial.

In 1914 Congress directed the Federal Trade Commission to study and report to the Congress on the conditions affecting U.S. export trade. In 1916 the Federal Trade Commission published a report that found American manufacturers and producers when attempting individually to enter foreign markets to be at a disadvantage because of strong combinations of foreign competitors and organized buyers. The report also noted that the threat of antitrust prosecutions under the Sherman Act deterred exporters from carrying out collective efforts to challenge foreign cartels.

In response to the findings of the FTC report, Congress passed in 1918 what has come to be known as the Webb-Pomerene Act. The purpose behind passage of the Webb-Pomerene Act was to provide U.S. exporters with the ability to compete in international markets on an equal basis with their foreign competitors. The Webb-Pomerene Act provides a limited exemption from both the Sherman and Clayton Antitrust Acts to qualified joint ventures in export trade known as Webb-Pomerene associations. The Webb-Pomerene law exempts from U.S. antitrust laws any association established "for the sole purpose of engaging in export trade," (15 United States Code, Section 62) as long as the association, its acts, or any agreements into which the association enters, do not: First, restrain trade within the United States; second, restrain the export trade of any domestic competitor of the association; or third, artificially or intentionally enhance or depress prices within the United States of commodities of the class exported by such association or substantially lessen competition within the United States or otherwise restrict trade therein (15 United States Code, Sec. 62).

The Webb Act defines "export trade" to include only "trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States" (15 United States Code, Section 61). As is obvious, the Webb Act does not extend to exports of services.

Mr. President, both the legislative history of the Webb Act and the administrative and judicial interpretation of the act shed light on its scope and intended effect.

The debate on passage of the Webb Act was centered on the resolve of two points mentioned in the FTC report. These were: First, that American firms and U.S. exports might be benefited if cooperative arrangements reduced the costs of foreign marketing or enhanced the bargaining power of American firms when dealing with foreign buyers; and second, that domestic trade might be affected adversely if cooperative arrangements enabled American firms either to exploit consumers in the home markets or exclude nonmember firms from the export market.

The legislative history of the Webb Act, including both House and Senate Reports and the debates in the CONGRESSIONAL RECORD, evidences that Congress presumed that formation of export trade associations would enable smaller American firms to compete more effectively with large and powerful firms abroad by permitting American sellers to combine and bargain collectively. It was believed that the combined power of American firms would provide the means for entry into foreign markets which previously were blocked by the power and tactics of sellers and buyers abroad.

Early in the history of the Webb Act the FTC issued a letter setting forth its enforcement intentions. In that letter, known as the 1924 "silver letter," the FTC announced that an association could qualify under the Webb Act if it existed for no other purpose than to fix prices and allocate sales in foreign markets—as long as the substantive criteria set forth in the act were met—and while foreign corporations were excluded from membership in Webb associations, these associations might enter into any cooperative arrangements with

nonnationals which might enhance their trade position in foreign markets.

A second determination of the "silver letter"—permitting restrictive agreements between Webb associations and foreign nationals—was rescinded in 1955. Under the new criteria outlined by the FTC, if export associations enter into restrictive agreements with foreign competitors, those agreements will not be within the antitrust protections of the Webb Act and the lawfulness of the associations' activities will be judged under the Sherman Act, as would similar conduct by an individual exporter.

After issuance of the "silver letter" it was not until the 1940's that further clarification was afforded the scope of the Webb-Pomerene antitruse exemption through a series of investigations conducted by the commission known as the "202 series of recommendations." These investigations concluded that a Webb-Pomerene association may not:

Enter into agreements of any kind with domestic producers who are not members of the association which fix prices, terms of sale, or otherwise restrain the free export of goods of nonmember firms. Pipe Fittings and Valve Export Association. (1946)

Enter into agreements of any kind whereby exports of domestic nonmember producers are deducted from the export quota of the association. Florida Hard Rock Phosphate Export Association. (1945)

Enter into agreements of any kind which prohibit association members from selling to domestic exporters in competition with the association, or which deduct sales by a member within the United States from the member's export quotas through the association. Phosphate Export Association. (1946)

Falsely represent that it is the sole export representative of the United States in a given industry. Pacific Forest Industries. (1940)

Enter into agreements of any kind with owners or operators of shipping terminals, thereby restricting use of such terminals to only association members. Phosphate Export Association (1946).

Be involved in acquiring control of any patent or process useful in the production of the goods it markets. Sulphur Export Corporation (1947).

Enter into an agreement of any kind which precludes or restricts the right of the association or its members from using a trademark or label in the United States. General Milk Co., Inc., Ltd. (1947).

Enter an agreement of any kind whereby it controls or attempts to control any of the terms or conditions of sales by its members within the United States. Phosphate Export Association. (1949).

Enter an agreement of any kind with any foreign producer or cartel whereby the United States is designated as an exclusive trade area, or imports into the United States are otherwise curtailed or restricted. Export Screw Association of the United States. (1947).

Own stock, either directly or indirectly through subsidiaries, in corporations or other producers outside the United States. Export Screw Association of the United States. (1947).

Enter an agreement of any kind whereby foreign producers are guaranteed the right to sell within a given area a specified tonnage over and above sales in that area by the association. Sulphur Export Corp. (1947).

Enter an agreement of any kind which discriminates among its members as to the right of withdrawal, resignation or restricting the right of former members to compete with the association after withdrawal. Phosphate Export Association. (1946).

Conduct office operations jointly with a domestic trade association. Carbon Black Export, Inc. (1949).

Enter an agreement of any kind to "maintain the status quo" in the world market of the industry and to do nothing which would encourage or increase competition in the industry. Sulphur Export Corp. (1947).

Take into membership anyone who is not a citizen of the United States, nor any foreign purchaser, customer, representative, or agent of a foreign company. Phosphate Export Association (1946).

In 1966 the Commission in advisory opinion No. 91 determined that membership by a firm owning foreign entities is permissible in a Webb-Pomerene association.

Further clarification as to the parameter of the antitrust exemption provided under the Webb Act has been gained through adjudication of a number of cases brought by the Department of Justice. Of these cases there are two major decisions which interpret the scope of the Webb Act.

In the first case, United States against Alkali Export Association (southern district, New York, 1944) the court found that a Webb association had violated the Sherman Act by participating in foreign cartels that engaged in practices resulting in the use of monopoly power to extinguish the competition of independent domestic competitors engaged in export trade and, which carried out practices that stabilized domestic prices by removing surplus products from the domestic market.

In the second case, United States against Minnesota Mining Mfg. (district court, Massachusetts, 1950) the court held that an export association could not establish or operate jointly owned facilities abroad and then went on to give illustrations of conduct that a Webb association may lawfully carry out: First, an association could be created by a majority of the firms in an industry; second, the association could be used as the members' exclusive foreign outlet; third, members of the association could agree that goods would be purchased only from member producers; fourth, resale prices could be fixed for the associations' foreign distributors; fifth, prices could be fixed and quotas established for members; and sixth, foreign distributors could be required to handle only the members' products.

The Minnesota Mining case provides the most authoritative interpretation of the scope and rationale of the antitrust exemption under the Webb-Pomerene Act. As stated by the court:

> Now it may very well be that every successful export company does inevitably affect adversely the foreign commerce of those not in the joint enterprise and does bring the members of the enterprise so closely together as to affect adversely the members' competition in domestic commerce. Thus every export company may be a restraint. But if there are only these inevitable consequences, an export association is not an unlawful restraint. The Webb-Pomerene Act is an expression of Congressional will that such a restraint shall be permitted.

In enacting the Webb-Pomerene Act, Congress envisioned an eager American business community availing itself of the opportunity to pool its facilities, resources, and expertise in such a fashion as to implement an ambitious joint exporting program. That vision never materialized.

At their high water mark between 1930 and 1935, Webb-Pomerene associations numbered 57 and accounted for approximately 19 percent of total U.S. exports. Today the number of associations has dwindled to around 30 and their share of total U.S. exports has dipped to less than 2 percent.

The reasons for this poor showing are many. To list but a few:

The business community traditionally has placed top priority on tapping the vast domestic market and has been much slower to focus on the prospects overseas.

The ever-expanding U.S. service industries have been excluded from qualifying for the act's antitrust exemption.

The Department of Justice, and to a lesser extent the Federal Trade Commission, have been perceived by the business community as exhibiting a thinly veiled hostility toward Webb-Pomerene associations. Therefore, the threat of antitrust litigation has served as a deterrent to broader utilization of the Webb-Pomerene Act.

All in all, there remains the strong impression among most parties that the Webb-Pomerene Act is a quaint relic of the past—a cracked plate that is not good enough to be brought out for company and yet not so useless as to be thrown away. This is regrettable, particularly at a time when we are suffering year in and year out $30 billion *deficits*.

Title II to the Export Trading Company Act of 1981 modifies the Webb-Pomerene Act in a way that will permit many more American firms to make use of its updated provisions to promote *exports*.

Title II does the following:

It makes the provisions of the Webb-Pomerene Act explicitly applicable to the exportation of services. (The National Commission for the Review of Antitrust Laws and Procedures made this same recommendation in its report to the President.)

It expands and clarifies the Act's antitrust exemption for export trade associations, and provides an antitrust exemption for export companies formed under

title I to the Export Trading Company Act of 1981.

It requires that the antitrust immunity be made contingent upon a preclearance procedure.

It transfers the administration of the act from the FTC to the Department of Commerce.

It creates within the Department of Commerce an office to promote the formation of export trade associations and trading companies.

It provides for the establishment of a task force whose purpose will be to evaluate the effectiveness of the Webb-Pomerene Act in increasing U.S. exports and to make recommendations regarding its future to the President.

Mr. President, with respect to amendments made to the Webb-Pomerene Act by title II, section 201 states the short title of the act while section 202 sets forth findings by the Congress regarding exports and joint exporting activities and the need for amending the 1918 Webb-Pomerene Act (15 United States Code, sections 61 to 66).

Section 203 amends section 1 of the Webb-Pomerene Act (15 United States Code, section 61) and defines the pertinent terms to be used in the amended Webb-Pomerene Act. "Export trade" is amended to include trade in services as well as that in goods, wares or merchandise. "Service" is defined as meaning intangible economic output and is intended to be an all-encompassing definition, a term not limited by usage relevant to any particular point in time. The term "trade within the United States" retains the definition under section 1 of the Webb-Pomerene Act. The definition of "antitrust laws" is intended to be all inclusive of both Federal and State statutes prescribing the competitive norms within the marketplace. Within the Federal jurisdiction this includes the Sherman Act, the Clayton Act, the Wilson Tariff Act and the Federal Trade Commission Act. The remaining definitions in section 203 are self-explanatory. It should be noted that the amendments to the Webb Act contained in title II are expanded to include qualified "export trading companies" as well as Webb associations.

Section 204 of title II amends sections 2 and 4 of the Webb-Pomerene Act (15 United States Code, sections 62 and 64) and establishes the scope of the antitrust exemption. Section 2 of the Webb-Pomerene Act exempts from the application of the Sherman and Clayton Antitrust Acts—specifically sections 1 to 7 of title 15 of the United States Code—any Webb association that is established for the sole purpose of engaging in export trade; does not restrain trade in the United States; does not restrain the export trade of any domestic competitor of the association; that does not artificially or intentionally enhance or depress prices within the United States of commodities of the class exported by the association; or does not substantially lessen competition within the United States.

Section 4 of the Webb-Pomerene Act extends the jurisdiction of the Federal Trade Commission Act to include unfair methods of competition used in export trade even though the acts were engaged in outside the United States.

Section 204 of title II establishes a new section 2 to the Webb-Pomerene Act. Section 2(a) sets out the eligibility criteria for the antitrust exemption afforded under the act for export trade associations and trading companies. Section 2(a) establishes six eligibility criteria. They are that the association or trading company and their export trade activities:

First: Serve to preserve or promote export trade;

Second: Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association;

Third: Do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association;

Fourth: Do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association;

Fifth: Do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members; and

Sixth: Do not constitute trade or commerce in the licensing of patents, technology, trademarks, or knowledge, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or export trading company or its members.

With the exception of the requirements in paragraphs (1), (4), and (6) of section 2(a) of the act—provisions that impose additional criteria for eligibility in addition to those found in the standards of the current Webb-Pomerene Act—the substantive law of antitrust as modified by the amended Webb-Pomerene Act has not been altered. The amendment of the Webb-Pomerene Act by section 204(a) of title II of S. 2718, with the exceptions as noted, is a codification of court interpretations of the Webb-Pomerene exemption to the domestic antitrust laws. In this regard I make specific reference to the decision in United States against Minnesota Mining and Manufacturing Co. which I alluded to earlier in my remarks. Also, the amendment is consistent with the present enforcement policy of both the Department of Justice and the Federal Trade Commission.

As stated by Ky Ewing, Deputy Assistant Attorney General, Antitrust Division, Justice Department, during hearings on S. 864—(now title II to the Export Trading Company Act of 1981—before the International Finance Subcommittee of the Senate Banking Committee on September 18, 1979:

We note (that S. 864) would require that a restraint of U.S. domestic trade be substantial before the exemption would disappear. The purpose of this proposal . . . is to bring the Act into what we conceive to be the current state of antitrust law interpreted by the court. (September 17, 18 hearing record on Export Trading and Trade Associations, p. 138).

Similarly, Daniel Schwartz, Deputy Director, Bureau of Competition, Federal Trade Commission, testified that the antitrust standards specified in S. 864 "are essentially equivalent to the standards of the Webb-Pomerene Act." (September 17, 18 hearing record on Export Trading and Trade Associations, p. 194.)

In his prepared statement, Mr. Ewing further explained that—

The judicially accepted legal threshold test for applicability of the Sherman Act to activity abroad places a heavier burden on government and private plaintiffs than that applicable domestically. The presence of a substantial and foreseeable effect on U.S. domestic or commerce is required, not merely some minimal effect. (September 17, 18 hearing record on Export Trading and Trade Associations, p. 144.)

Mr. Ewing also noted in his testimony before the subcommittee that—

The Department of Justice has long predicated its enforcement efforts in export related matters upon the ability to prove a substantial and foreseeable effect on U.S. commerce. (September 17, 18 hearing record on Export Trading and Trade Associations, pp. 154–155.)

Mr. President, during debate on S. 2718 last year, a question was raised that if section 204(a) is nothing more than a codification of not only current judicial understanding of section 2 of the Webb Act but also the enforcement intent of both the Department of Justice and the Federal Trade Commission, why was it necessary to amend this section of the Webb Act with the exception of paragraphs (1), (4), and (6) as I previously noted? The record evidences that the amendment is necessary in order to provide certainty to the business community in their international trade activities assuring them that their activities do not run afoul of domestic antitrust laws.

This is accomplished by establishing a certification procedure and by codifying not only present applicable case law but also the enforcement intentions of the antitrust oversight branches of our Government. Two examples will suffice. Under the present Webb-Pomerene Act, if an activity of a Webb association is "in restraint of trade within the United States"—section 2 of the Webb-Pomerene Act—then the international trading activity of that association is not exempt from prosecution under the antitrust laws. When is a "restraint" actionable? When it is de-minimus, insignificant, something more than inconsequential, substantial, or just what kind of measurement is to be employed? The Court in Minnesota Mining held that the restraint has to be something more than the inevitable consequences of the joint activity of competitors. The Department of Justice stated its enforcement intent under the Webb Act to be against joint exporting activities that have a substantial and foreseeable restraint on domestic trade. It would seem to this Senator that for the business community to be sure as to the circumstances under which its international trade conduct is to be held accountable, that the test judging the conduct be written in law. It is for this reason that "substantial" modifies the phrase "restraint of trade" and "sub-

stantially" modifies "lessening of competition" in section 2(a) of the act.

A second example relates to section 2 of the Webb-Pomerene Act which states that a joint exporting activity which "artificially or intentionally enhances or depresses prices within the United States" is outside the scope of the antitrust exemption provided by the act. The point I wish to make here is that for a business venture to rely on such a test—"artificially or intentionally"—is to place reliance on a standard which gives a false sense of security to joint exporting activities. The courts in the area of antitrust jurisprudence have developed a test that looks not to the mind—intent of the actors—but to the foreseeable consequences of their actions—the effect. It is for this reason that under paragraph 3 of section 2(a) of the act, the eligibility criteria is that the joint exporting activity does not "unreasonably enhance, stabilize or depress prices within the United States * * *," a test that looks to the effect of the actions not at the intent of the actors.

It should be noted that the eligibility criteria found in paragraph (6) of section 2(a) of the act requires nothing more than a determination by the Secretary that the international trading activity of the trade association or export trading company not be solely trade in the "licensing of patents, technology, trademarks, or know-how" with the exception that such trade may be present if it is incidental to the sale of goods or services. It is the purpose of the Export Trading Company Act of 1981 to further U.S. export trade in goods and services and not to promote trade in processes or ideas that could well result in the opposite effect occurring.

Mr. President, under section 2(b) of the act an export trade association, export trading company and their respective members that have their trade, trade activities and methods of operation certified according to the procedures set forth under section 4 of the act and carried out in conformity therewith are exempt from the operation of the antitrust laws be it private or sovereign—State or Federal—enforcement of those laws. The immunity from prosecution under the antitrust laws is complete from the day the certification goes into effect until it is either revoked or rendered invalid pursuant to actions taken under section 4 (d) or (e) of the act. If a revocation or invalidation occurs under the act, the loss of immunity is prospective only.

Mr. President, I believe it important to explain for the benefit of my colleagues how the antitrust immunity provided under title II, which attaches after certification, differs from the antitrust immunity afforded under the current Webb-Pomerene Act.

Under current law, a Webb-Pomerene association that complies with the filing requirements of section 5 of the Webb Act and which is not in violation of the substantive law standards of section 2 of the Webb-Pomerene Act is exempt from the operation of the antitrust laws but only as to those sections of the Sherman and Clayton statutes set out in the Webb-Pomerene statute. Further, neither the fact of immunity nor the extent thereof is known until an association is sued and obtains a judicial determination that section 2 of the Webb-Pomerene Act has not been violated. What the Webb association has is only a hope. A case in point is United States against United States Alkali Export Association (Southern District of New York, 1944). In that case a Webb association was charged with entering into agreements with foreign cartels for the purpose of dividing world alkali markets, assigning international quotas, and fixing prices in certain territories other than the United States.

The Webb association admitted the agreements but asserted in defense that it had complied with the filing requirements of section 5 of the statute, that its activities were not in violation of section 2 of the statute and therefore the association was immune from prosecution under the antitrust laws. Notwithstanding the association's belief that it was in compliance with the law, the court found to the contrary. The court's holding placed the arrangements employed by the alkali association outside the protective provisions of the Webb Act and exposed the association to liability under the antitrust laws. The Webb association which was organized in 1919 found out, after appeals, that the antitrust immunity which it believed it had for 40 years did in fact not exist.

Under the procedures established under title II, a Webb association—or for that matter an export trading company—whose export trade activities have been certified and which association or company acts within that certification knows for certain that those activities are exempt from both private and sovereign enforcement of either State or Federal antitrust laws. The latter, besides encompassing the Sherman and Clayton antitrust laws and the Wilson Tariff Act includes the antitrust provisions of the Federal Trade Commission Act, sections 5 and 6 thereof. The certainty provided through the certification process is not lost until action is taken pursuant to the provisions of title II either to revoke or invalidate the certification. If the latter occurs, the loss of the antitrust exemption is prospective—for future conduct only.

Under section 2(c) of the act, when a certificate is issued by the Commerce Department, and the Department of Justice or Federal Trade Commission has previously advised the Department of Commerce of its disagreement with a determination to issue a certificate granting immunity under the act, the immunity from the operation of the antitrust laws is held in abeyance for 30 days. This provision is applicable to the issuance of a certificate under section 4(b).

Section 205, Mr. President, provides conforming changes in style to section 3 of the Webb-Pomerene Act (15 United States Code, section 63).

Section 206 amends sections 4 and 5 of the Webb-Pomerene Act (15 United States Code, sections 64 and 65) and adds an additional seven sections to the act. Section 4 of the Webb-Pomerene Act extended the jurisdiction of the Federal Trade Commission Act to include acts committed outside the United States. Under title II both the Department of Justice and the Federal Trade Commission have authority to seek invalidation of a certificate when the export trade activities, or methods of operation of the association or trading company no longer meet the requirements of section 2 of the act. One of the eligibility criteria under the act specifically paragraph (4) of section 2(a), is that of "unfair methods of competition," an antitrust standard uniquely within the expertise of the Federal Trade Commission and a standard which establishes a norm of competitive behavior prescribed by section 5 of the Federal Trade Commission Act. While under the current Webb Act there exists no exemption for joint exporting activity that may be found to violate section 5 of the Federal Trade Commission Act, such an exemption is provided under the Export Trading Company Act of 1981.

Section 5 of the Webb-Pomerene Act establishes administrative requirements for associations operating under the act. Each association, within 30 days after its formation, has to submit a statement to the Federal Trade Commission giving details concerning its certificate of incorporation and bylaws. The association must also furnish to the Commission such information as the Commission requests.

The Commission may also investigate associations if it believes that the law may have been violated. Recommendations for readjustment can be made by the Commission and if the association does not comply with the recommendations the Commission may refer its findings to the Department of Justice for any appropriate action. Under the present Webb-Pomerene law a Webb association that complies with the filing requirements of section 5 would not know if it had an immunity from the operation of the antitrust laws until a judicial determination was rendered that section 2 of the Webb-Pomerene Act has not been violated.

Mr. President, section 206 of title II provides a new section 4 to the Webb-Pomerene Act. Section 4(a) establishes the procedure to apply for certification as either an export trade association or export trading company. The section specifically paragraphs (1) through (9) describes the information to be included in the application for certification which paragraphs I believe are self-explanatory.

Most notable of the informational filing requirements are a description of the circumstances showing that the association or export trading company will serve a need in promoting the export trade in the goods or services involved, a description of the methods by which the association or company intends to conduct its export trade and any other information which is reasonably available to the applying parties and which is necessary for the grant of certification.

Under section 4(b)(1) the Secretar

of Commerce is required to certify an association or company within 90 days after receiving the application. During this 90-day period the Secretary will have the opportunity to consult with both the Department of Justice and the Federal Trade Commission. The purpose for the consultation is to provide an opportunity for the two antitrust enforcement agencies of our Government to share with the Secretary of Commerce their respective analysis of and any concerns they may have relative to the eligibility criteria of the act, section 2(a).

Under section 4(b)(1) an association or company will be granted a certificate upon a determination by the Secretary that: First, the association or trading company and their respective export trade, trade activities and methods of operation meet the requirements of section 2 of the act and second, that the association or company and their respective activities will serve a specified need in the promotion of the applicable export trade.

Mr. President, during the hearings in 1979 and 1980 on S. 864 and amendment 1674 to S. 864, concern was raised as to the application of a "needs test" in the proposed legislation. In its report to the President and the Attorney General on January 22, 1979, the National Commission for the Review of Antitrust laws and Procedures concluded that if the Congress determines that it is necessary to continue the Webb-Pomerene exemption it should seriously consider that before any immunity from the operation of the antitrust laws is afforded an association of joint exporters, the latter "be required to make a showing of need".

Under section 2(a) of the act, specifically paragraph (1), one of the eligibility criteria for ascertaining whether a certification is to be issued is whether the joint exporting activities "serve to preserve or promote export trade." The question was asked as to how the eligibility criteria of section 2(a)(1) is related, if at all, first to the needs showing under section 4(a)(6) and second to the needs determination required of the Secretary under section 4(b)(1).

During the debate on S. 2718 last year, in a colloquy with Senator HEINZ, I stated there was no relationship. I went on to state that the reason for providing an exemption from the operation of the antitrust laws for the joint exporting activities of either a Webb association or Export Trading Company is that without such an exemption, and an exemption which is certain, it would not be reasonable to conclude that such joint exporting activities would be undertaken except on an infrequent basis.

Therefore, to encourage such activity, an exemption is available. However, the exemption should only be utilized to preserve—that is to say maintain the status quo—or promote—that is to say add to—export trade. To be eligible for the exemption, such a finding—that the association or trading company will preserve or promote export trade—should be made by the Secretary of Commerce. Further, since the existence of that fact is 1 of 6 eligibility criteria, the finding would be subject to judicial consideration under a section 4(e) action.

On the other hand, the determination by the Secretary under section 4(b)(1) utilizing information tendered pursuant to section 4(a)(6) is not subject to judicial consideration under a section 4(e) action. The reason behind requiring the Secretary to not only determine that the six eligibility criteria of section 2(a) will be met but that the activities of the Webb association or Export Trading Company will serve a specified need in promoting the export trade covered by the certification is simple.

It was believed that those seeking to avail themselves of the benefit of the Webb-Pomerene exemption should come forward and share with the oversight agency, the Department of Commerce, the reasons they believe their activities will be in furtherance of the export trade of our Nation. The needs demonstration required by section 4 of the act is nothing more than a subjective explanation by the association or trading company as to how its activities will further U.S. trade. The Secretary in his determination will either agree or disagree with that evaluation. Section 4 contemplates nothing more than a subjective explanation by the Webb association or trading company that the activities of the association or company will further U.S. export trade.

Mr. President, the Secretary, under section 4(b)(1) must specify in the certificate the permissible export trade, trade activities, and methods of operation of the association or company. The immunity from the operation of the antitrust laws provided by section 2(b) of the act applies to those enumerated activities.

Under section 4(b)(1) the Secretary must issue the certificate or deny the application 90 calendar days after an application is filed but may extend that process by an additional 30 days with the agreement of the applicant. After an application is filed, by the 45th day, the Secretary is to deliver to the Attorney General and the Federal Trade Commission a copy of any certificate the Secretary proposes to issue. No later than 15 days thereafter—in the case of a certificate delivered on the 45th day, by the 60th day—the Attorney General or Commission may given written notice of an intent to offer advice on the determination. If the Commission or Attorney General does not respond within the 15-day period or formally advises the Secretary of no disagreement with his intent to issue a certificate then the Secretary may issue a certificate at any time.

If the Attorney General or Commission advises the Secretary of an intent to offer advice on the application, then such advice must be provided the Secretary within 45 days of the date the Attorney General or Commission received from the Secretary a copy of the proposed certification. In the case of the Attorney General or Commission notifying the Secretary of Commerce of his intention to offer formal advice on the 60th day after the certificate has been filed the formal advice must be given by the 90th day, since the proposed certificate was tendered to each agency on the 45th day. The extension of time afforded under section 4(b) applies only to the granting of the certificate and not to the time during which the Attorney General or Commission is obligated to act.

Section 4(b)(2) of the act provides that an association may request expedited consideration on its application. The time constraints in section 4(b)(1) must still be honored but it is expected that if a need is demonstrated justifying expedition than all affected agencies will act in due speed.

Section 4(b)(3) provides automatic certification for existing Webb-Pomerene associations which request such certification within 180 days after enactment of the act. Under the amendment, the certification process for existing Webb-Pomerene associations is to comport with the process applicable to other associations seeking certification under the act, with two exceptions:

First, under paragraph (3) of section 4(b) the Secretary's review of the application for certification is to be summary in nature. Specifically, the Secretary is required to determine whether the application shows "on its face" whether a certificate should issue. It is further stated that unless the Secretary "possesses information clearly indicating that the requirements of section 2(a) are not met"—again, by looking at the application "on its face" and having available the advice of the Department of Justice or Federal Trade Commission—the Secretary must issue the certificate for the export trade, export trade activities and methods of operation that meet the requirements of section 2(a) of the act.

Second, when issuing a certificate pursuant to paragraph (3) of section 4(b) the Secretary need not determine that the association and its activities "will serve a specified need in promoting the export trade of the goods, wares, merchandise or services described in the application." An existing Webb-Pomerene association need not have to demonstrate that its existence is in furtherance of U.S. export trade. Such will be presumed.

Section 4(b)(4) provides a mechanism whereby an association whose application for certification or amendment thereto is denied is to be afforded a hearing with respect to that determination pursuant to section 557 of title 5 of the United States Code.

Section 4(c) of the act requires that after certification, if there occurs a material change—meaning something more than inconsequential—related to the association or trading company's membership, trade, trade activities or methods of operation, then an affirmative duty on the part of the association or company exists to report the change to the Department of Commerce. At the time the report is made the association or company may request that its certification be amended. Under section 4(c) if the request for an amendment to the certification is reported by the association or company within 30 days of the fact of

the change the antitrust immunity provided by the act continues uninterrupted if the material change subsequently becomes incorporated into the certification through approval by the Secretary of Commerce. The decision as to whether the 30-day test has been met is within the discretion of the Secretary who shall state such when acting upon the request for an amendment to the certification.

It should be noted that any interruption in the period of the antitrust immunity occasioned by the failure to notify the Secretary of a material change within the 30-day period does not affect the scope of the underlying certification except as to that part relevant to the material change. One final comment concerning section 4(c) is necessary. The request to obtain certification for a material change must be made within the 30-day period after the change occurs. The decision by the Secretary to accept the request and approve the change is not required to be made within the 30-day period.

Under section 4(d) the Secretary, after notification to an association or trading company and after affording it a hearing, may require that the association or company amend its organization or methods of operation to correspond to its grant of certification. Further, if the Secretary determines that the eligibility criteria of section 2(a) of the act are no longer met, the Secretary must either revoke the certification or himself make such amendments to the certification to satisfy the eligibility criteria of the act.

Mr. President, section 4(e)(1) authorizes either the Department of Justice or the Federal Trade Commission to bring an action to invalidate, in whole or in part, the certification granted to an association or trading company on the grounds that the eligibility criteria of section 2 of the act are no longer being met. Once an association or trading company's export trading activity has been certified under the act, the only action provided by law against the association, trading company or their respective members would be either a self-initiated action by the Secretary under section 4(d) of the act or an action by the Department of Justice or Federal Trade Commission under section 4(e) of the act. Under section 4(e) a private party does not have a cause of action against a Webb association, trading company or their respective members under the Federal, or for that matter, State antitrust laws for injury to it.

Section 4(e)(3) of the act provides that only the Department of Justice or the Federal Trade Commission has standing to bring a cause of action in court against a trading company or Webb association for violation of section 2 of the act. Therefore, apart from the complained against activity being ultra vires to the certification, a private party has no standing to bring suit. However, after a certificate has been revoked or invalidated, a private party could have standing to bring an action under the antitrust laws based on activities subsequent to the revocation or invalidation. I would also point out that a private party who may be "aggrieved by an order of an appropriate banking agency" pursuant to section 105(e)(1) of title I of the Export Trading Company Act of 1981 may not employ the broad standing provision of section 105(e)(1) in order to obtain standing against an export trading company or association with respect to its export trade, trade activities and methods of operation.

Mr. President, under section 4(e)(1), before the Department of Justice or Federal Trade Commission may sue to invalidate a certification, it is required to notify the affected parties 30 calendar days in advance. It is anticipated that this 30-day period will allow sufficient time for the parties to resolve their differences, if at all possible. The 30-day notification period is not applicable to an action seeking a restraining order under section 4(e)(2).

The authority of the district court under an action for invalidation is to consider the issues de nova. The only issues that are before the court are whether the requirements of section 2(a) of the act, the eligibility criteria, are being complied with by the association or trading company. While the Secretary of Commerce must consider the requirements of section 2(a) and determine that the activities of the association or trading company will serve a specified need in promoting the applicable export trade in order to issue a certificate, the specified need determination of the Secretary is not an issue which is subject to consideration by the district court in a section 4(e)(1) action.

The district court in a section 4(e)(1) action may either issue an order invalidating the certificate, after which the association or company may continue to exist but does so without the protection of the antitrust immunity of section 2(b) of the act, or require the association or company to modify its organization or methods of operation in order to comply with the requirements of section 2(a) of the act.

Under section 4(e)(2), during the 30-day period, the effecve date of the grant of certification is held in abeyance, the Department of Justice or Federal Trade Commission may seek an applicable order prohibiting the certificate from taking effect. It is anticipated this right of action granted by section 4(e)(2) will be used sparingly. This provision for a temporary restraining order or prohibition is applicable to the issuance of a certificate pursuant to section 4 of the act.

Further, the common law requirements applicable to the granting of either a temporary restraining order or preliminary injunction must be met by the moving party before the court can issue such an order. Congress means for this not to be an easy burden to overcome.

The provision for the restraining order or prohibition was added at the request of the Department of Justice. It exists as a safety valve where, in the opinion of the antitrust enforcement agencies of our Government, the Secretary of Commerce intends to issue a certification to either a Webb association or a trading company and there exists, on the face of the certification, obvious violations of section 2 of the act. The sole issue before the court is whether on the face of the certification there exists such obvious violations of section 2 of the act that a restraining order or prohibition must be issued.

Mr. President, section 5 of the act mandates that within 90 days after enactment, the Secretary of Commerce, after consulting with both the Department of Justice and the Federal Trade Commission, publish proposed guidelines. The guidelines are to relate to the process by which the Secretary of Commerce will reach his determinations under section 4 relative to whether the requirements of section 2 of the act are being met. The guidelines shall be periodically reviewed and revised where warranted.

Sections 6 and 7 of the act are self explanatory.

Under section 8 of the act, an existing Webb-Pomerene association which requests certification within the applicable time would not lose the immunity from the operation of the anti-trust laws provided under section 2 of the present Webb-Pomerene law until a final determination is made pursuant to the provisions of the Export Trading Company Act of 1981.

An existing Webb-Pomerene association which seeks certification under the act within 180 days after such act's enactment retains the immunity from the operation of the antitrust laws it had under section 2 of the present Webb-Pomerene law. This is accomplished by reenacting section 2 of such law, as provided under subsection (c) of section 8, but making the immunity provided by subsection (c) applicable only to existing Webb-Pomerene associations that meet the requisites of subsections (a) and (b) of section 8. The immunity which is carried over by section 8 from the current Webb-Pomerene law is not lost by a Webb-Pomerene association to which it attaches until a final determination is made as to the association's request for certification.

For instance, if the Secretary under paragraph (3) of section 4(b) determines not to issue a certificate to an existing Webb-Pomerene association or determines not to certify a method of operation requested in the application, and the association appeals that determination under the provisions of paragraph (4) to section 4(b), the immunity provided by section 8 continues to attach until a final decision is reached on the Webb-Pomerene association's request for certification.

Section 9 of the act requires that portions of applications, amendments, and annual reports that contain trade secrets or confidential business or financial information, which if disclosed could competitively harm the party submitting the information, be held confidential and not disclosed except as provided under section 9(b). The latter section under specific circumstances, allows disclosure to the Attorney General or Federal Trade Commission. Sections 10, 11, and 12 of the act, I believe, are also self-explanatory.

Mr. President in September 1978, then-President Carter announced steps that would be taken toward the formulation of a coordinated national export

policy. At that time, the President called for a reduction of domestic barriers to exports. He urged that the laws and policies affecting the international business community, including the antitrust laws, be administered firmly and fairly but with "a greater sensitivity to the importance of exports than has been the case in the past." The Export Trading Company Act of 1981 seeks to give some teeth to that proclamation.

Particularly, the changes in the Webb-Pomerene Act that we advocate will assure a more hospitable attitude toward those whose important task it is to push American goods and services abroad. Yet, at the same time the provisions which we offer for consideration today are tough enough to allow the appropriate authorities to uncover and terminate any domestic anticompetitive spillover from the operations of export trade associations or trading companies.

Mr. President, this bill alone is not going to solve the problem of our trade deficit. It is only a step, but it is a significant step in the right.

EXPORT TRADING COMPANY BILL

Mr. BENTSEN. Mr. President, there is broad agreement, in the Senate and throughout this country, that the state of our economy is the most urgent, important, and complex problem facing the Reagan administration.

In surveying our economic difficulties, I think any objective observer would conclude that the United States must remain competitive in rapidly expanding world markets. We must make every effort to increase our exports and narrow the trade deficit that has been running at about $30 billion a year, causing a hemmorhage of dollars abroad, fanning the fires of inflation, and placing additional pressure on the value of our currency.

The Export Trading Company legislation we are submitting today will not solve America's problems in world trade, but it will certainly help us remain competitive in the international marketplace and encourage many smaller, dynamic American firms to engage in export activities.

During the last Congress I was privileged to work closely with Senators STEVENSON, HEINZ, and DANFORTH in the effort to shape this legislation and bring it before the Senate. I believe the inherent logic behind the Export Trading Company bill and the urgent requirement for such legislation is evident from the fact that it was approved by a vote of 77 to 0 last September. Given the magnitude and urgency of the economic problems facing America today, I sincerely hope that we can get prompt and favorable Senate action on the Export Trading Company bill during this session.

Mr. President, many of our difficulties in international trade are a function of persistent, deep-seated domestic economic problems like inflation, declining productivity, and woefully low rates of savings and investment.

Before we can hope to compete successfully over the long term with nations like Japan and West Germany, we must demonstrate that we can put our own house in order. And it will take time, sacrifice, and discipline to achieve the fundamental reforms that will restore stability and real growth to the American economy.

The long-term nature of our economic problems should not, however, discourage us from taking steps that can have an immediate, positive impact on our ability to export. The time has long since passed when we can ask American business to sit back and accept unique, self-imposed restraints on their ability to market American products abroad.

The Export Trading Companies Act is designed to redress some of the inequities of the past; its sole purpose is to permit the formation of more efficient and effective U.S. export trading companies able to provide a wide variety of services to thousands of American businesses not traditionally oriented toward exports.

Last year, Mr. President, I traveled to East Asia with the Joint Economic Committee to meet with the American business community and assess our competitiveness in the region. We held 9 days of hearings, and I can tell you that the American business community abroad—those who are in the front lines in the battle for world markets—stressed the point, time and again, that our export performance would be well served by the sort of trading companies envisioned in this legislation.

We are not trying to make a line for line copy of the enormous—and enormously successful—Japanese trading companies. But we are looking at trading companies that will be able to spread out the risks, handle the paperwork, and absorb some of the currency fluctuations that currently deter many American firms from entering the export market. We are talking about trading companies that can help identify emerging market opportunities and match them with American producers; that can assist in organizing joint construction projects abroad, and deal effectively with the complex logistics of foreign trade.

This legislation also helps clarify many of the long-standing antitrust ambiguities that currently hinder the formation of American consortia to bid on significant export projects. By updating the Webb-Pomerene Act and making it applicable to the export of services as well as goods, this legislation accomplishes an objective Senator DANFORTH and I have been pursuing for the past 2 years.

It also expands and clarifies the antitrust exemption for export trade associations and transfers administration of the act to the Department of Commerce. It creates an office within Commerce to promote joint export activities and establishes a specific certification procedure that will eliminate the element of uncertainty in current law.

I am also enthusiastic, Mr. President, about the banking aspects of this legislation which would permit the American banking community to participate in export trading companies, thereby providing the financial resources and expertise that have become such an essential ingredient in the success of our competitors.

We have seen time and again that the ability to offer attractive credit terms to potential foreign buyers often means the difference between winning and losing sales. By permitting U.S. banks to acquire ownership in export trading companies under specified conditions, and with appropriate safeguards, we can provide an important asset in our drive to restore export competitiveness to the American economy.

In considering this legislation, Mr. President, I think it is important to understand that American exporters are currently competing against the combined resources of some of the most efficient and aggressive trading nations in the world. We remain one of the few nations where government and business cling to an outmoded adversary relationship in the quest for vital world markets.

I can see no good reason to continue to deny our exporters the support and assistance of full-fledged American export trading companies, and I hope we can move promptly to pass this legislation.

By Mr. THURMOND (for himself and Mr. HOLLINGS):

S. 146. A bill to authorize the Secretary of the Interior to assist in the preservation of historic Camden in the State of South Carolina, and for other purposes; to the Committee on Energy and Natural Resources.

ASSISTANCE TO HISTORIC CAMDEN

Mr. THURMOND. Mr. President, I am pleased today to introduce, along with my distinguished colleague from South Carolina, Mr. HOLLINGS, legislation to authorize the Secretary of the Interior to assist in the preservation of historic Camden, S.C.

Senator HOLLINGS and I introduced this measure in the 97th Congress; however, because it was attached to other more controversial legislation, it did not achieve final passage. I understand that the legislation we introduced in the last Congress, which was verbatim the measure we introduce today, met with no opposition in and of itself. In fact, both the House and the Senate passed separate measures containing the identical provision pertaining to historic Camden, but there was insufficient time for a conference to resolve differences in other parts of the legislation.

This bill authorizes the Secretary of the Interior to enter into cooperative agreements with the Camden Historical Commission, the Camden District Heritage Foundation, or other appropriate organizations to aid in the protection and restoration of historic areas. Thus, this bill will insure the continued preservation of Camden's historical assets without the greater expenditures which would have been necessary had Federal acquisition been required.

Mr. President, let me say a few words concerning the importance of preserving the historic nature of Camden. The town has played a significant role in the history of the United States. During the Revolutionary War, Camden was occupied by the British where they remained

"SEC. 2032B. EXCLUSION OF CERTAIN FARM PROPERTY.

"(a) GENERAL RULE.—If—

"(1) the decedent was (at the time of his death) a citizen or resident of the United States, and

"(2) the executor elects the application of this section with respect to all qualified farm property and files the agreement referred to in subsection (e)(2),

there shall be excluded from the value of the gross estate a portion of the value of qualified farm property, as determined under subsection (b).

"(b) AMOUNT OF EXCLUSION.—The portion of the value of qualified farm property which shall be excluded from the gross estate under subsection (a) shall be determined in accordance with the following table:

If the value of qualified farm property is:				The exclusion is:
Not over $750,000				The value of qualified farm property.
Over $750,000	but	not	over $850,000	$750,000 plus 85% of the excess over $750,000.
Over $850,000	but	not	over $1,050,000	$847,500 plus 80% of the excess over $850,000.
Over $1,050,000	but	not	over $1,250,000	$1,007,500 plus 75% of the excess over $1,050,000.
Over $1,250,000	but	not	over $1,450,000	$1,157,500 plus 70% of the excess over $1,250,000.
Over $1,450,000	but	not	over $1,650,000	$1,297,500 plus 65% of the excess over $1,450,000.
Over $1,650,000	but	not	over $1,850,000	$1,427,500 plus 60% of the excess over $1,650,000.
Over $1,850,000				$1,547,500.

"(c) VALUE OF QUALIFIED FARM PROPERTY.—For purposes of this section, the value of qualified farm property is the value of such property which is included in gross estate under this part (without regard to this section or section 2032A).

"(d) DEFINITION OF QUALIFIED FARM PROPERTY.—For purposes of this section, the term 'qualified farm property' means qualified real property as defined in subsection (b) of section 2032A, other than qualified real property to which paragraph (2)(B) of such subsection applies.

"(e) ELECTION; AGREEMENT.—

"(1) ELECTION.—

"(A) IN GENERAL.—The election under this section shall be made not later than the time prescribed by section 6075(a) for filing the return of tax imposed by section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe.

"(B) ELECTION NOT ALLOWED IF ELECTION MADE UNDER SECTION 2032A.—No election may be made under this section with respect to an estate if an election has been made with respect to such estate to have the value of any protion of qualified real property determined under section 2032A(a).

"(2) AGREEMENT.—The Agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in qualified farm property to which an election under this section applies consenting to the application of section 2032A(c) with respect to such property.

"(f) SPECIAL RULES.—

"(1) APPLICATION OF ADDITIONAL TAX.—For purposes of applying subsection (c) of section 2032A, any amount excluded from gross estate under this section shall be treated as an amount by which the value of qualified real property is decreased under section 2032A(a).

"(2) VALUE OF INTEREST IN QUALIFIED FARM PROPERTY FOR PURPOSES OF ADDITIONAL TAX.—In determining the value of an interest in qualified farm property for purposes of section 2032A(c), the portion of the amount excluded under this section for qualified farm property which shall be allocated to such interest shall be an amount which bears the same relation to such amount excluded, as the value of such interest (determined without regard to this section or section 2032A) bears to the value of all qualified farm property similarly determined."

(b) The table of sections for part III of subchapter A of chapter 11 of the Internal Revenue Code of 1954 is amended by inserting after the item relating to section 2032A the following new item:

"Sec. 2032B. Exclusion of certain farm property."

SEC. 3. (a) Subparagraph (D) of section 2032A(b)(1) of such Code is amended to read as follows:

"(D) such real property is designated in the agreement referred to in subsection (d)(2), or, in the case of qualified farm property with respect to which an election is made under section 2032B, in the agreement referred to in subsection (e)(2) of such section."

(b) Paragraph (3) of section 2032A(b) of such Code is amended by inserting "or section 2032B" after "without regard to this section" each place it appears.

(c) Subsection (c) of section 2032A of such Code is amended by adding at the end thereof the following new paragraph:

"(8) CROSS REFERENCE.—

"For additional amounts treated as amounts subject to tax under this subsection, see section 2032B(f)(1)."

(d) Paragraph (1) of section 2032A(d) of such Code is amended to read as follows:

"(1) ELECTION.—

"(A) IN GENERAL.—The election under this section shall be made not later than the time prescribed by section 6075(a) for filing the return of tax imposed by section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe.

"(B) ELECTION NOT ALLOWED IF ELECTION MADE UNDER SECTION 2032B.—No election may be made under this section with respect to an estate if an election has been made with respect to such estate under section 2032B."

SEC. 4. The amendments made by this Act shall apply to estates of decedents dying after December 31, 1981.●

RECESS

The SPEAKER pro tempore. Pursuant to the previous order of the House, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 1 o'clock and 19 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 1600

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. MOAKLEY) at 4 p.m.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a bill and a concurrent resolution of the House of the following titles:

H.R. 1553. An act to provide for a temporary increase in the public debt limit; and

H. Con. Res. 58. Concurrent resolution providing for an adjournment of the House from February 6 to February 17, 1981, and an adjournment of the Senate from February 6 to February 16, 1981.

The message also announced that the Senate agreed to the following resolution:

S. RES. 36

Resolved, That the following-named Members be, and they are hereby, elected members of the following joint committees of Congress:

Joint Committee on Printing: Mr. Mathias of Maryland, Mr. Warner of Virginia, and Mr. Cannon of Nevada.

Joint Committee of Congress on the Library: Mr. Mathias of Maryland, Mr. Hatfield of Oregon, Mr. Baker of Tennessee, Mr. Pell of Rhode Island, and Mr. Williams of New Jersey.

EXPORT TRADING COMPANIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. BONKER) is recognized for 5 minutes.

● Mr. BONKER. Mr. Speaker, this bill we are introducing today to promote the formation of export trading companies is the same as H.R. 7230 which passed the House Foreign Affairs Committee last July. Unfortunately, the House did not have time to consider the legislation in the 96th Congress.

If there is any doubt about the importance of this legislation, one only needs to look at our trade balance with one trade ally—Japan.

During the last 10 years, we have incurred a $47 billion trade deficit and today the dollar value of Japanese goods sold in the United States exceeds the combined dollar value of American oil imports from the Middle East.

At the start of our trade relationship we supplied the Japanese with manufactured goods in exchange for silk and tea.

Now, as one congressional report stated:

It appears as though we are a developing nation supplying a more advanced nation—we are Japan's plantation: haulers of wood and growers of crops in exchange for high technology.

We import from Japan, autos, steel, tractors, radios, motorcycles, and video and audio tape players.

We export to Japan soybeans, cattle feed, wood, coal, and wheat.

This bill deserves the overwhelming support of all of my distinguished colleagues. It fosters the creation of trading companies to boost exports from the United States.

These trading companies should be particularly useful to the thousands of smaller manufacturers who cannot afford the cost and risks of exporting directly.

Commerce Department studies show that these new companies have the potential ultimately to lift overall U.S. exports by as much as 30 percent.

Surveys suggest that as many as 20,000 additional firms could be ex-

porting. They are inhibited by a lack of exporting know-how; uncertainties about business practices abroad; the complexities of United States and foreign documentation; the problems of packing for export and arranging for overseas transportation; and inadequate financial resources.

A great variety of enterprises currently provide export trade services to U.S. producers—freight forwarders, brokers, shippers, jobbers, insurance companies, commercial banks, export management companies, advertising firms, trade lawyers, foreign purchasing agents, and others. But most fulfill only one or a few of the many functions required to engage in export trade.

Export success can often depend on intermediaries which take the actual risks and can easily develop economies of scale in marketing, transportation, financing, and other export services.

Export trading companies would provide comprehensive one-stop service to smaller exporters including market analysis, distribution, documentation, financing, and after-sales service. Additionally, they could buy and sell on their own account and thus would be able to resell the products of small and medium-sized companies overseas.

A few American trading companies and trade associations specializing in agricultural commodities or raw materials—such as timber and grain—do exist, but they do little to expand exports of U.S. manufacturers. In fact, as I indicated previously, the United States finds itself in a colonial situation with respect to exports. We ship out our raw resources and buy manufactured products in return.

This situation is no more acute than in the wood products industry. As a country we are a heavy exporter of raw logs—but our export of finished products is all but negligible. We are not obtaining the full economic benefit of our natural resource. In addition, we continue to import some 30 percent of our finished wood products from Canada.

This makes little sense at a time when high interest rates have crippled the housing and lumber industries. The domestic market for finished wood products has vanished as housing starts have plummeted. In Washington State, housing starts are down 35 percent. The lumber industry is in turn dramatically affected—last year more than 100 of the 818 sawmills in the 12 Western States closed their doors, and another 275 curtailed shifts or made other adjustments. In Washington State, about one-third of the 4,500 plywood workers are unemployed. Many smaller sawmills have been particularly hurt, and may never go back into business.

We in Congress must do what we can to promote export of our finished products, at a time when the domestic market is in trouble. Today, the smaller mills—as well as many other manufacturers—simply do not have the expertise to barter and negotiate effectively with foreign governments. As a result, we are forced to take these markets as we find them, limiting ourselves to the exportation of raw resources, while the foreign governments protect their domestic processing industries at the expense of our own.

U.S. producers have not until recently had access to general purpose trading companies. Such companies now operate in the United States, but only on behalf of Japan, Korea, and Western European countries. Entities which are owned or subsidized by foreign governments compete directly with private U.S. exporters for shares of the world market.

The United States finds itself at a disadvantage today in the world market. This is reflected in our balance-of-trade deficit, which is currently running at an annual rate of more than $40 billion.

Although this is due in large measure to our reliance on foreign oil, it is a fact that the United States is not sophisticated in dealing with the intricacies of foreign markets. Our exporters do not receive the Government support and subsidies of their foreign competitors. Worse, they often discover that their most serious obstacles are the legal and regulatory restraints of their own Government.

As a result, we have been losing ground in the export market. Between 1960 and 1970, the U.S. share of world exports dropped from 18 percent in 1960 to 15.4 percent in 1970. The percentage continued to decline during the 1970's and only began picking up at the end of the decade, as the value of the dollar dropped, making U.S. goods more attractive to foreign buyers.

Today, export of goods accounts for about 7.5 percent of our GNP—the lowest percentage of any industrialized nation, according to the Commerce Department. For example, France's exports account for 16.7 percent of its GNP; Germany's, 22.6 percent; Italy's, 22.3 percent; the Netherland's, 36.3 percent; and the United Kingdom's percentage is 23.1.

The free market, in theory, ought to have generated American export trading companies long ago. But the market forces are imperfect, due to Government regulation, the structure of American enterprise, and traditional ways of doing business.

For example, Government regulations exclude U.S. banks from offering most export trading services. Federal Maritime Commission regulations prevent export traders that take title to goods from receiving commissions for freight brokerage from carriers. Antitrust uncertainties deter U.S. companies from expanding export trading activities in cooperation with other U.S. producers.

This legislation achieves a good balance between encouraging export trade on the one hand and safeguarding the existing appropriate antitrust provisions that protect the domestic competitors of export trading companies and export trade associations.

The threat of antitrust action has served as a deterrent to broader utilization of the Webb-Pomerene Act and the formation of trade associations for the purpose of promoting exports.

The vagueness of that act leaves uncertain what activities will constitute a substantial restraint of domestic trade.

This bill ends that uncertainty.

By establishing prior certification and by setting precise standards for antitrust exemptions and by transferring the authority for administering the act from the Federal Trade Commission and the Justice Department to the Commerce Department, we have increased significantly the degree of certainty involved in creating export trade associations or export trading companies for specified export activities.

In addition, small- and medium-sized firms engaged in international transactions would benefit from the development of export trading companies, which would enable them to pool resources and technical expertise and to achieve economies of scale.

The rapidly growing service-related industries are vital to the well-being of the U.S. economy since they create jobs for 7 out of every 10 Americans, provide 65 percent of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products.

This legislation is not a panacea for all our trading ills nor will it solve our export problems overnight.

But, trading companies are badly needed to help U.S. businesses to compete with foreign trade organizations.

This legislation goes a long way toward providing that assistance.

The time has never been better for the Congress to exercise some leadership in the area of promoting exports.

Without new legislation to reduce impediments and encourage U.S. trading companies, we will simply fail to realize our export potential as a country.

A summary and the bill follow:

PURPOSE AND SUMMARY

The purpose of this bill is to increase exports of U.S. goods and services by encouraging and facilitating the provision of export trade services to U.S. companies through the greater use of export trading companies and export trade associations. The bill seeks to accomplish that purpose by the following principal means:

First, an office is to be established in the Department of Commerce to promote and encourage the formation of export trading companies and export trade associations;

Second, export trading companies are given greater access to financial resources and marketing expertise through bank participation in export trading companies, assistance by the Economic Development Administration and the Small Business Administration in meeting the startup costs and

operating expenses of small- and medium-sized export trading companies, and Export-Import Bank loan guarantees, secured by accounts receivable and inventories, to export trading companies;

Third, antitrust exemptions of the Webb-Pomerene Act are extended to associations formed for the purpose of exporting services and to export trading companies and a certification procedure is established under the Webb-Pomerene Act so as to provide greater certainty to export trading companies and export trade associations;

Fourth, DISC and Subchapter S tax incentives are made available to export trading companies.●

CONCERN FOR HUMAN RIGHTS IS IMPORTANT TO OUR NATIONAL SECURITY

(Mr. SEIBERLING asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. SEIBERLING. Mr. Speaker, it is not hard to understand why President Reagan invited President Chun of South Korea to visit Washington and why, at the end of the visit, President Reagan had some kind things to say about President Chun and his country, South Korea, despite its internal problems. We have a strong interest in the continuing independence of South Korea.

President Reagan chose that occasion to point out that thousands of Americans gave their lives in Korea "in defense of freedom." Ironically, there is still precious little freedom in South Korea today. The commutation of Kim Dae Jung's death sentence and the lifting of martial law by President Chun shortly before his trip to Washington were rightly welcomed as steps away from repression. Tuesday's Washington Post reports that Mr. Chun has pledged further steps to restore democratic institutions in South Korea. *Certainly the United States* has an interest in encouraging such steps and in monitoring the South Korean Government's actions to implement Mr. Chun's pledge.

For this reason, it seems unfortunate that President Reagan also chose the occasion to remark that the internal affairs of other countries are none of our business. While Mr. Reagan made similar statements when he was a private citizen, now that he is President they take on an entirely new dimension. Even as to countries which are our adversaries, it would be difficult to square such a remark with our often expressed concerns over such matters as violation of basic human rights in the Soviet Union. President Reagan himself has expressed such concerns. The Helsinki agreement, to which the United States and the Soviets are both parties, recognizes that some political rights and some human rights are so basic that they are properly the concern of all countries.

In the case of a country, such as Korea, with which we have mutual defense arrangements or to which we have extended tremendous material and moral support, it is just plain incorrect to assert or imply that we have no concern as to how that country's government treats its citizens. The tremendous outpouring of protests by Americans, including resolutions adopted by the Congress, protesting the planned execution of Kim Dae Jung is proof to the contrary.

Such concern is not only proper in a moral sense but from a practical standpoint. I find myself in agreement with the Reagan administration that our national interests in the Far East require a continued U.S. military presence in South Korea. However, the fate of repressive regimes to which we have provided economic and military support in the past—for example, Batista in Cuba, Thieu in South Vietnam, the Shah of Iran, General Romero in El Salvador, and President Somoza in Nicaragua—ought to have taught us that, in the long run, military strength alone will not maintain regimes whose brutality and repression alienate their own people. Have we any reason to believe that the Chun regime can survive if it likewise alienates the people of South Korea?

The damage potential of President Reagan's remarks will, if they are not promptly corrected, go far beyond South Korea. They cannot help but embolden tyrants like Marcos in the Philippines and rightwing terrorists in El Salvador and Guatemala. They will strike a body blow to our efforts to push regimes like those in Argentina and Chile to cease their atrocities.

Above all, if there is one thing worse than encouraging the enemies of freedom and human rights, it is dismaying freedom's friends. One of the great strengths of the United States among the peoples of the world has been that, from the founding of our Nation to the present, we have stood for humanity. "We hold these truths to be self-evident * * *," we proudly proclaimed in 1776 and have since fought a revolutionary war, a civil war, and two world wars to prove that we meant it. We diminish ourselves in the councils of the world and in the eyes of humanity, if we now choose to abandon these principles in our dealings with other nations, cherishing them only for ourselves.

If our policy were to rely only on military force and economic power to protect our interests as a nation, we would find in the end that all our power is not enough. We would, like Napoleon, learn the hard way the profound truth of his own maxim: "In war, the moral is to the material as three is to one."

I would hope that, on reflection, President Reagan would find himself in general agreement with the thoughts expressed above. If he does, I would hope that he would select some appropriate occasion in the near future to publicly reassert our Nation's continuing concern for basic human rights everywhere in the world.●

RULES OF COMMITTEE ON INTERIOR AND INSULAR AFFAIRS FOR 97TH CONGRESS

(Mr. UDALL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. UDALL. Mr. Speaker, pursuant to rule XI, clause 2, I present for printing in the RECORD the rules adopted by the Committee on Interior and Insular Affairs:

RULES OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

A. RULES OF GENERAL APPLICATION

Rule 1. Rules of the House.—The Rules of the House of Representatives are the rules of its Committees and Subcommittees so far as applicable, except that a motion to recess from day to day is a motion of high privilege in Committees and Subcommittees. Written rules adopted by the Committees, not inconsistent with the Rules of the House, shall be binding on each Subcommittee. Each Subcommittee of a Committee is a part of that Committee and is subject to the authority and direction of that Committee. Rule XI of the Rules of the House, which pertains entirely to Committee procedure, is incorporated and made a part of the Rules of the Committee which are supplementary to the Rules of the House.

Rule 2. Time, Place of Meetings.—(a) While Congress is in session, regular business meetings of the Committee shall be held in the regularly assigned committee room, Longworth House Office Building, beginning at 9:45 a.m. on each Wednesday, except that whenever any party caucus or conference conflicts with such meeting of the Committee, then the Committee shall meet on Thursday or on such other day as may be mutually agreed upon by the Chair and the Ranking Minority Member. Such meeting shall be called to order and presided over by the Chair, or in the absence of the Chair, by the ranking majority member of the Committee present.

(b) Special meetings shall be held at the call of the Chair or upon written request of members of the Committee as provided in Rule XI, Clause 2, of the Rules of the House. When a regularly called party caucus or party conference is scheduled to be in session after 10 a.m. on any day, and the Chair is so advised not later than 12 noon on the preceding day, the regularly scheduled Committee meeting for that day shall be rescheduled as provided in paragraph (a) of this rule.

(c) Each meeting of the Committee or any of its Subcommittees for the transaction of business, including the mark-up of legislation, shall be open to the public except when the Committee or Subcommittee, in open session and with a majority present, determines by rollcall vote that all or part of the remainder of that meeting on that day shall be closed to the public because disclosure of testimony, evidence or other matters to be considered would endanger the national security or would violate any law or rule of the House of Representatives: *Provided however*, That no person other than Members of the Committee and such congressional staff and such departmental representatives as they may authorize shall be present at any business or mark-up session which has been closed to the public. This paragraph does not apply to any meetin.

Yet in the midst of a so-called program for economic renewal, the administration has struck a monetary accord with the Federal Reserve Board which virtually guarantees another year of punishing interest rate levels. High interest rates helped to set a post-World War II record for bankruptcies last year, and the administration has told us they will continue those policies for 1981. Bankruptcies were up 58 percent in 1980, compared to 1979. This is the highest year-on-year increase in 35 years. Over 11,000 businesses closed their doors during 1980, and most of them were small businesses. Over 90 percent of those failures were businesses with less than $1 million in liabilities.

Small businesses are particularly vulnerable to high interest rates. They cannot borrow, even at the phantom prime rate, but they must borrow, at whatever rate, simply to maintain inventories.

The Banking Committee's Subcommittee on Domestic Monetary Policy will be holding hearings in 2 weeks, and one of its main concerns will be with the plight of small businessmen. With all the talk of vast reindustrialization programs, we must not forget that millions of small businessmen form the backbone of our economy, and that they operate on narrow profit margins which are squeezed even tighter by high interest rates.

But while industry and business are hard pressed by high interest rates, the ultimate burden falls on the workers who are thrown out of work as the recession gains steam. To even think of increasing the recessionary pressures on the economy, in the face of 8 million unemployed workers, is a heartless and cynical turning from the goals of full employment to which this country is allegedly dedicated. I am not sure what President Reagan and Chairman Volcker feel these workers have done that justifies their sacrifice so that the rest of us may live easier, but I am sure that we cannot stand by idly while the Government turns the screws one more time, and squeezes 1 million more people onto the unemployed lines during 1981.

Mr. Speaker, there is no easy answer to this problem of monumental interest rates. We cannot, as some would have us do, simply bring rates down 10 percent overnight. Interest rates must come down as the general economic outlook improves during the next few years. But the least we can ask of the Federal Reserve Board, and of the Reagan administration, in their new monetary record, is that they do not compound the tight money policies of the past year by further slowing the growth of money for 1981, thus bringing on even higher interest rates for the coming year.

The Federal Reserve told us last week that they predicted unemployment could rise by over 1 million people in 1981—to over 9 million people. The leading economic indicators for the most recent months are uniformly down. Yet the Federal Reserve is telling this country that it will continue to pursue recessionary policies in the face of a declining economy. Many economists predict renewed interest rate pressures from these policies, toward the end of the year. These pressures could drive interest rates into the mid-twenties. This may be good news for large banks, and those lucky enough to afford $10,000 Treasury bills. But for the millions of people who work for $10,000 to $15,000 a year, it means 1 more year of trying to survive. For thousands of other workers and small businesses it will mean the year they will stop participating in the economy altogether—they will become unemployed or go bankrupt.

IN SUPPORT OF THE POSITION OF ASSISTANT SECRETARY FOR TERRITORIES

(Mr. SUNIA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SUNIA. Mr. Speaker, the territories are waiting, and wondering, with a great deal of hope, that the President and the Secretary of the Interior will not downgrade the level of Territorial management to that of an office director. There are reports that the post of Assistant Secretary for Territorial Affairs at the Interior Department may soon become victim to the cuts.

In the near 100 years that we have been a territory of the United States, the most significant recognition that has come our way, in the way of management of our concerns, was the elevation of the manager of those concerns from that of an office director to that of Assistant Secretary.

The very size of our Federal Government, and the intricacies of overlapping and intertwining agency responsibilities, make it extremely difficult for small entities, like our territory, to work out their problems. It was indeed a stroke of wisdom when they elevated the position of the Territorial Director to that of Assistant Secretary last year. Congress approved, because Congress realized that the manager of our concerns has to have standing that can cut through redtape.

I stand here to testify to the marked change in management of our affairs, when the job was given to an advocate with a clout. Now we hear reports that we may lose the recognition and the clout to cuts. That in my view, Mr. Speaker, would be a sad and serious mistake.

I say these words without disrespect to the abilities and the integrity of the men and women who have served us well and ably in the post of Director of Territories, but the honest truth is, Mr. Speaker, their efforts were continuously frustrated because they lacked high authority. For in addition to cutting their way through Interior itself, they must also carry some recognition when they advocate our concerns with other departments and agencies. That is very important.

Finally, Mr. Speaker, we as a territory, are indeed "America" in the South Pacific. We are all that is American in the south seas. Surrounding us are all kinds of islands that have become independent or are in various states of such development. While we have no such aspirations, I certainly would like to remind you and my colleagues here of the indignity of having to face those neighbors with a reduced status of Federal recognition. I would much rather not go to those South Pacific conferences and interisland get-togethers any more. They will just look at us as being some program managed by an office director somewhere in Interior.

I know some people will say that these views lead to the establishment of a post that is an unnecessary expense. I do not make these comments because I have some complex, Mr. Speaker. I make them because they are important and real. And I am not alone. Members of this body who have dealt with Territorial problems for years and possess wide experience about these matters, have expressed views similar to mine, and supportive of the continuation of the Assistant Secretary post.

In conclusion, let me voice a truth we all know and must appreciate. The Secretary of the Interior never has enough time for the territories. No one complains about that because we all recognize that there are issues of greater national implication to which he must direct a great deal of his attention. For us, that is fine. Let us have the Assistant Secretary; that is good enough.

We must not forget that we are governed by Governors elected by the people, and by legislatures elected by the people. Do we not deserve relationship to the secretarial level? I think we do, sir. And I think the administration will find that this suggestion will work to the benefit of the territories as well as the Federal agencies concerned. Thank you.

INTRODUCTION OF FOREIGN TRADE ANTITRUST IMPROVEMENTS ACT OF 1981

(Mr. RODINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RODINO. Mr. Speaker, I am introducing today, along with the gentleman from Illinois (Mr. McCLORY), the Foreign Trade Antitrust Improvement Act of 1981, a bill to amend the Sherman and Clayton Acts to clarify the international application of U.S. antitrust laws.

During the past several years the U.S. position as a competitive interna-

tional trading nation has eroded. Our position is not nearly as dire as some suggest but the staggering increases in oil prices throughout the last decade have clearly ended the era when the United States could persistently maintain a large trade surplus. Other factors, such as elimination of the fixed monetary exchange rate and increased competition for high-technology markets, have heightened this problem. There is a manifest need for more aggressive, competitive participation by American firms in the international marketplace.

Business representatives frequently claim that the uncertain international reach of the antitrust laws has prevented desirable participation by American producers in the export market. Specific complaints identify the uncertain status of joint ventures and the failure of the Webb-Pomerene Act to exempt export trade associations providing services as significant problems. This bill will resolve those difficulties.

The Supreme Court has held that section 7 of the Clayton Act applies to joint ventures when the participants form a separate corporation and purchase the new venture's stock. Section 7 prohibits acquisitions that may substantially lessen competition and attacks potentially anticompetitive market concentration in its incipiency. Businessmen must, therefore, exercise caution when forming such ventures. This bill would exempt joint ventures that are limited to export trading.

This does not mean that export-related joint ventures are free of all antitrust restrictions. They remain subject to the Sherman Act, but the stringent "incipiency" standard of section 7 would not apply.

The bill also modifies the Sherman Act to more clearly establish when antitrust liability attaches to international business activities. The Sherman Act prohibits restraints of trade or commerce with foreign nations. This bill will establish that restraints on export trade only violate the Sherman Act if they have a direct and substantial effect on commerce within the United States or on a domestic firm competing for foreign trade. It allows American firms greater freedom when dealing internationally while reinforcing the fundamental commitment of the United States to a competitive domestic marketplace.

Foreign entities, including sovereigns, may currently sue American firms that restrain trade abroad even if the activity has no domestic impact. This amendment would eliminate that possibility. There would be no violation unless the restraint on export trade has a direct and substantial effect on American commerce or competitors.

The major deficiency of the Webb-Pomerene Act would be corrected by this amendment to the Sherman and Clayton Acts. Associations exporting services will not violate the Sherman Act unless they engage in activities that have the proscribed domestic effect.

The intense interest in export promotion has generated numerous legislative proposals during the last several years, some of them incorporating a certification process which could require clearance by a number of different Government agencies. I am concerned about the prospect of increasing Government regulation at a time when the costs of regulation and added bureaucracy are uppermost in all of our minds. Indeed, the burden of an application process, the disclosure it may require, and the constant risk of Government intervention and regulation may impede, rather than stimulate, exports. The bill I am introducing today provides the certainty potential exporters desire without imposing undesirable governmental intervention. Mr. McCLORY has joined me as a cosponsor of this bill. I welcome his support and believe this approach, which directly attacks the problem of uncertainty without creating a needless bureaucracy, will enjoy bipartisam support.

It would be unwise in my opinion to expect any modification of the antitrust laws to expand the U.S. export trade dramatically. No antitrust exemption can eliminate the added costs and risks of dealing in foreign markets. Ultimately, only increased productivity and efficiency will insure American producers a significant role as competitors in the international marketplace. At the same time, the uncertainty of antitrust constraints has remained a strong concern to potential exporters; that concern is remedied by this bill. Those engaged solely in export trading activities need not be concerned about the antitrust laws so long as their activities do not have a substantial adverse effect on domestic commerce or competitors.

INTRODUCTION OF THE FOREIGN TRADE ANTITRUST IMPROVEMENTS ACT OF 1981

(Mr. McCLORY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, the Foreign Trade Antitrust Improvements Act of 1981, which I am cosponsoring today with Mr. RODINO, squarely addresses the complaint voiced by American exporters and potential exporters that their actions are inhibited by uncertainty regarding the scope and effect of our antitrust laws, and it does so without establishing a bureaucratic apparatus which would confer antitrust immunity at an uncertain cost in Government redtape and possible anticompetitive domestic effects. By clarifying the law, it will especially help those small- and medium-size businesses which many are convinced have the greatest potential for making a significant contribution to our volume of export trade.

While our 1980 trade deficit declined from the previous year, from $29.384 billion to an estimated $26.735 billion, the deficit obviously remains an extremely serious problem which must be overcome by the concerted efforts of our exporters, our labor force, and our Federal Government, including this Congress. Some exporters have expressed concern about the extraterritorial reach of U.S. antitrust laws and their application to certain types of international transactions, although a comprehensive study of export disincentives published last year by the Department of Commerce and the Office of the Special Trade Representative expressly did not include the antitrust laws among the major export trade disincentives, and no specific instances of those laws unduly restricting exports were shown. I believe that that concern, which is fundamentally born of uncertainty, should be greatly alleviated by the prompt passage of this legislation. It is abundantly clear, of course, that the major disincentives which have been identified, such as taxation of foreign earned income, export controls, the Foreign Corrupt Practices Act, and other significant factors will also have to be dealt with by this Congress, and I anticipate giving my support to measures which appropriately address these problems.

The Foreign Trade Antitrust Improvements Act would amend the Sherman Act, which prohibits restraint of trade or commerce with foreign nations, to provide that it "shall not apply to conduct involving trade or commerce with any foreign nation unless such conduct has a direct and substantial effect on trade or commerce within the United States or has the effect of excluding a domestic person from trade or commerce with such foreign nation." In other words, no violation will lie unless the restraint on export trade has a direct and substantial effect on our domestic commerce or on a domestic competitor. This legislation will send to the export business community the clear signal that it appears to need in order for it to compete with greater confidence and freedom of action in the international marketplace, and it should also help to deter unjustified private and governmental actions against exporters. It has the great merits of clarity, brevity, and effectiveness. In my judgment, the proper response to exporters who feel that the law is unclear is to clarify the law rather than to establish complex bureaucratic licensing procedures. Such procedures in themselves may prove to be as intimidating to the small exporter as the perceived lack of clarity in the law is today.

I find it fundamentally unfair that under section 4 of the Clayton Act, foreign persons, including sovereign

nations, may bring actions against American firms for restraint of export trade even though their conduct has no domestic ramifications. Many of these, including Germany, Austria, and the European Community, have domestic-effects standards in their own antitrust laws which allow their own citizens to restrain trade in purely export activities, and many more have no antitrust laws whatsoever to which Americans may have recourse. The former can hardly complain if we make a domestic-effects standard part of our own statutory law, and the latter may be inspired by this legislation to enact their own antitrust laws, a not unwelcome development to anyone who cares about competition in the marketplace. After enactment of the Foreign Trade Antitrust Improvements Act, direct and substantial effects on our domestic trade or commerce or the effect of excluding a domestic competitor will have to be found in order for a foreign sovereign or other entity to bring an action in our courts.

The bill also amends section 7 of the Clayton Act, which prohibits acquisitions which may be anticompetitive or tend to create a monopoly, to exempt from that section "joint ventures limited solely to export trading, in goods or services, from the United States to a foreign nation." The existing very stringent statute may have prevented some American companies in competition with each other from forming joint ventures to compete for overseas business. The bill eliminates section 7 as an impediment to the formation of such useful and necessary combinations, while preserving review under the Sherman section 1 restraint-of-trade standard as amended.

It remains to be noted that this legislation responds to a major criticism of the Webb-Pomerene Act by allowing export trade associations to export services as well as goods, wares, or merchandise, subject to the constraints of the Sherman Act. The inclusion of services within the coverage of Webb-Pomerene was an important recommendation of the National Commission for the Review of Antitrust Laws and Procedures, on which I was privileged to serve.

Mr. Speaker, I regard this legislation as an important proposal which will contribute to the reduction of our trade deficit in years to come through its encouragement of more effective export trade efforts by American firms. In conclusion, I would point out that this measure is being introduced today by both the chairman and the ranking minority member of the Committee on the Judiciary. With this initial bipartisan sponsorship, I am encouraged to believe that this bill will attract the widespread support from both sides of the aisle which I strongly believe it deserves.

HOUSE EXPORT CAUCUS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 60 minutes.

(Mr. ALEXANDER asked and was given permission to revise and extend his remarks and to include extraneous matter.)

Mr. ALEXANDER. Mr. Speaker, for the last several years I have been chairing the Export Caucus in the House of Representatives. Yesterday, the House Export Task Force held its organizational meeting for 1981 to elect new officers. They are the Honorable DON BONKER, chairman; the Honorable LES AUCOIN, first vice chairman; the Honorable BILL FRENZEL, second vice chairman, and myself, secretary.

The executive committee is to be announced at a later date.

My initial concern in organizing this caucus was that the United States was not active enough in trying to build markets abroad for American products and services. My district in Arkansas depends very heavily on export markets for the sale of Arkansas products and it is of fundamental concern to my constituents that our export channels be as open and efficient as possible.

During my travels abroad and my conversations with Americans living in many overseas countries, I have become aware of several new dimensions to a larger issue that embraces the export question. This issue is how to strengthen the overall role of the United States in the economic, political, and ideological marketplaces of the world.

There is a strong perception at home, and particularly abroad, that something is gravely amiss in our present approach to defining our Nation's proper role in the world today. One proposed solution to this perception of inadequacy is to increase our spending on armaments and strengthen our Armed Forces. I have no quarrel with such advocates, but I do question the extent to which they have considered all of the elements that enter into the complicated calculus of the national interest and its promotion and protection abroad.

Mr. Speaker, it is my conviction that the greatness of our country is defined and manifested by the efforts of our individual citizens. The projection of our ideals and the demonstration of the productivity of our renowned pragmatism comes to those abroad through the efforts and influence of our citizens who live and work abroad. It is in the day-to-day life of our private citizens abroad that the most fundamental aspects of the promotion and defense of the national interests of the United States are carried out.

When I examine the myriad problems facing our American citizens who live abroad, I am dismayed by the evidence that the United States does not have a coherent policy position in regard to how such citizens should be treated while they are away from home, and what competitive standing they should have when they confront citizens of other countries in the most vital markets of the world.

I am very dismayed by the fact that the United States alone has chosen a tax philosophy in regard to our citizens abroad which guarantees that American citizens will always have a competitive disadvantage no matter where they live abroad. Some recent attempts have been made to alleviate certain aspects of this competitive disadvantage, but no proposal yet introduced would bring the overseas American to full equality with competitors from other nations.

It is for this reason, Mr. Speaker, that I will introduce a bill to transform our tax approach toward our overseas citizens from one based upon citizenship to one based upon the locus of residence of such citizens. This is precisely the philosophy and practice of all of our competitors abroad. And, it is important to add that upon the enactment of this legislation, the overseas American would not enjoy any competitive advantage over citizens of any other country abroad, but would no longer suffer severe competitive disadvantage as now is unfortunately the case in so many of the most critical areas of the world.

The American entrepreneur abroad does more to build respect and admiration for the free enterprise system than all the tanks and airplanes we could ever deploy. The thoughtful and dedicated overseas American does more to bring about a better understanding of our political ideas and institutions than all of the propaganda expenditure we might be tempted to use as a substitute. The economic development of the rest of the world, and the creation of markets for American products, are fostered more by dedicated U.S. entrepreneurs than by all of our bilateral and multilateral assistance programs combined.

What I am saying, Mr. Speaker, is that the best possible weapon we could deploy to build a stronger America, to assert global leadership and help make a better world is to unleash the reins that we have used to restrain and frustrate our own citizens.

Capitalism will produce a better life for the underdeveloped nations than communism if allowed to compete equally.

At the same time we will be increasing our exports and creating jobs for our own constituents at home. Our present policies have unwittingly been doing the Kremlin's work in reducing the size and the effectiveness of our American private citizen presence abroad. It is time we took a better look at the way we have been treating our overseas citizens and analyzed their contribution from the perspective of how appropriate they are to the furthering of all of our long-term goals

Soviet power in Asia. Beijing has opted for a gradual and measured moderatization of its military forces. That is wise and proper. In specific instances, however, we may wish to make available selected technologies so that China neither falls further behind the Soviets nor is forced to cloak its deficiencies behind a facade of xenophobic self-reliance.

In the words of Thomas Jefferson, let us seek today in Asia, as we did at our founding 200 years ago, "equal and exact justice for all men, of whatever state or persuasion . . . and peace commerce and honest friendship with all nations."

Thank you.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES ACT

The PRESIDING OFFICER (Mr. STEVENS). Under the previous order, the Senate will now resume consideration of S. 734 which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 734) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of Alaska, suggests the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, I see that Senator PROXMIRE, my colleague on the Banking Committee, my distinguished ranking minority member, was not only on his way but is now present.

Mr. PROXMIRE. Right.

Mr. HEINZ. I would like to take this opportunity to make a brief opening statement.

Let me state at the outset, Mr. President, that this will be brief as the Senate has faced these issues before, and I believe most Senators are prepared to move forward on S. 734.

The bill before us today, S. 734, is an original bill reported from the Banking Committee incorporating some minor changes the committee made in S. 144, the basic export trading company legislation which Senators DANFORTH, BENTSEN, TSONGAS, and I introduced on January 19. That bill presently has 63 cosponsors, including a majority of Senators in both parties.

On March 23 I placed in the RECORD a summary of the substantive changes the committee made in S. 144. I ask unanimous consent, Mr. President, that that summary be printed at the conclusion of my opening remarks today.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HEINZ. None of the changes in question alters the basic provisions of this legislation.

Mr. President, this bill, which is essentially the same as legislation which passed the Senate unanimously last year, is a concrete effort to translate into action an objective we all share; namely, improving our Nation's export picture. That this is an objective worth achieving is no longer in dispute.

Although the ratio of exports to GNP rose from 4.2 percent in 1972 to 7.5 percent in 1979, U.S. imports, led by massive increases in the cost of oil, grew equally as fast, increasing in importance relative to GNP from 5.1 percent to 8.7 percent in the same years. Because imports have expanded since 1972 from a higher base than exports, the trade deficit has expanded sharply, with an aggregate deficit over the past 5 years exceeding $105 billion.

Because of their superior international competitiveness in manufactured goods, our major trade competitors have been able to offset their imported energy bills much better than the United States. According to a study done by the National Association of Manufacturers last year, imports of manufactured goods increased nearly four times as fast as exports since 1970, with that margin growing in the last half of the decade. The study further concluded that our industrial competitiveness is declining measured both by increased import penetration here and loss of export markets elsewhere.

The U.S. share of world markets declined from 21.3 percent to 17.4 percent over the past 10 years, the largest relative decline among major industrial exporters. We have lost market share in 8 of the 9 EC countries and 12 of the 13 OPEC countries. While our manufactured goods trade has stayed in rough balance, Japan and West Germany in 1979 had surpluses of $70 billion and $60 billion respectively. The study concludes:

Because of worsening terms of trade, the U.S. has to run faster, in terms of export volume, to say in the same place. . . . Improving the U.S. trade account by further depreciation of the dollar (which increases inflation) and/or by restraining U.S. growth (which increases unemployment) are very unattractive long-term policy options.

Obviously, that trend is not going to be reversed overnight. But every successful program of trade promotion is a step in the right direction. Small- and medium-sized businesses have too long been excluded from a significant role in our Nation's export picture.

In an effort to do something about our deteriorating export performance, my predecessor as chairman of the Subcommittee on International Finance and Monetary Policy, former Senator Stevenson, and I initiated an extended series of hearings in 1978 on export policy and performance.

Out of those hearings grew this legislation, based on a realization that substantial numbers of small- and medium-sized businesses, 20,000 in the Commerce Department's estimate, could export but did not. In investigating this, the committee concluded that small businesses were deterred from exporting both by their traditional focus on domestic markets and by serious barriers—real and perceived—to exporting in the form of different customs rules, licensing standards and languages, unfamiliar marketing practices, and financing difficulties. In short, the small businessman has, not surprisingly, found foreign marketing alien and confusing, and therefore has avoided it.

One way to surmount these barriers is through export trading companies—service-providing companies that will perform some or all of the functions that intimidate small businessmen. In its most advanced form, the export trading company might simply buy the goods from the domestic source and resell them abroad itself, assuming all the risk and responsibility. In a more limited form, the export trading company might provide marketing advice—to the point of finding a market and helping arrange a purchase—for a fee, leaving the seller on his own to complete the transaction.

An export trading company, of course, could also provide a wide range of other services in that case, helping to obtain necessary Government licenses and approvals, finance, and ultimately ship the product. There are an infinite number of scenarios, but they all revolve around the same theme—removing some or all of the risk and unfamiliarity of foreign marketing from the domestic businessman.

In looking at why such service-providing organizations do not exist now in adequate numbers, we concluded that there are two primary problems which could be addressed through legislation—undercapitalization and antitrust uncertainties. A third area, a need for adequate tax incentives, will be the subject of another bill we will shortly introduce. The first two problems are addressed in the legislation before us today.

In brief, S. 734 deals with the capital problem by providing for limited bank investment in export trading companies. Because it is not our intent simply to permit banks to move unrestricted into certain kinds of commercial activities, the bill narrowly limits the scope of bank involvement, particularly with respect to bank control of a trading company, which in every case would have to be approved by the appropriate bank regulatory agency.

Beyond the basic statutory limit of 5 percent of the bank's capital which could be invested in the export trading company, S. 734 contains numerous other restrictions to protect the safety, soundness, and integrity of banks involved with trading companies.

The report on the bill lists these limitations in detail. Mr. President, and I ask unanimous consent that that list be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

(1) The bill prohibits banking organizations from making loans to any export trad-

ing company in which the banking organization holds any interest whatsoever, and to any customers of such company, "on terms more favorable than those afforded similar borrowers in similar circumstances" or involving "more than the normal risk of repayment" or presenting "other unfavorable features." Thus, banking organizations would be barred from making preferential or unusually risky loans to export trading companies or their customers.

(2) The appropriate Federal banking agency may require divestiture or impose conditions on a banking organization's investment in an export trading company if the export trading company "takes positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of its business operations." That is, purely speculative activities are forbidden for any trading company controlled by a banking organization.

(3) The bill prohibits a trading company with a banking organization investor from engaging in "manufacturing or agricultural production activities" and permits it to engage in underwriting, selling, or distributing securities only to the extent its bank investor may do so under applicable Federal and State laws and regulations.

(4) The bill empowers the Federal banking agencies (the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board for Federal savings banks) when acting on a banking organization's application to take a controlling interest in an export trading company, to impose any conditions they deem necessary—

(A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices.

(5) The bill authorizes the Federal financial institutions regulatory agencies to establish standards with respect to the taking of title to goods by any export trading company subsidiary of a banking organization, standards "designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. Such standards may specifically include inventory-to-capital ratios.

(6) The bill would bar any banking organization from taking a controlling interest or making any investment over $10 million in any export trading company without receiving the prior approval of the appropriate Federal banking agency. The Federal agency would be required to disapprove any application for which it finds—

That the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the particular investment.

(7) The bill would prohibit aggregate investments by any banking organization of more than 5 percent of its consolidated capital and surplus in one or more export trading companies.

(8) The bill would prohibit the total historical cost of a banking organization's direct and indirect investments in a trading company combined with extensions of credit by such organization and its subsidiaries from exceeding 10 percent of the banking organization's consolidated capital and surplus.

(9) The bill would allow the appropriate Federal banking agency—

Whenever it has reasonable cause to believe that the ownership or control of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the banking organization . . . to terminate . . . its investment in the export trading company.

(10) The bill requires that any banking organization investment, even if it is less than $10 million, be reported to the appropriate Federal banking agency. After receiving such notification, the agency could disapprove the investment or impose conditions on it if the agency determined that the trading company was a subsidiary of the banking organization investor.

(11) A banking organization also must report each additional investment in a trading company subsidiary or the engagement by a trading company subsidiary in any new line of activity, such as taking title to goods, which was not included in any prior application for approval of banking organization control of the trading company. The Federal banking agency could disapprove the proposed investment or new activity under the same standards applicable to controlling investments.

(12) The bill prohibits a trading company from having a name similar to that of its bank organization investor unless the bank organization owns a majority equity interest in the trading company.

The Committee is supported in its view that the bill contains appropriate Federal regulatory authority over bank investments in export trading companies by the Administration, by the Comptroller of the Currency, and (with one exception) by the Federal Reserve Board. The sole exception is the Board's view that Federal bank regulatory agencies should not be authorized to approve any controlling investments by banks in export trading companies with the possible exception of certain "ingle-purpose" trading companies. Specifically, the Board would prohibit any one banking organization from acquiring 20 percent or more of any export trading company and any group of banking organizations from acquiring more than 50 percent of a trading company. The Board would accept non-controlling investments, subject to the provisions contained in the bill. The Board appears to question the ability, as well as the propriety, of permitting banks, either singly or as a group to manage export trading companies.

Mr. HEINZ. In my judgment, this is an overly conservative approach designed to calm unrealistic fears. However, the bill is the product, Mr. President, of a good deal of compromise—compromise with two administrations, compromise with bank regulatory agencies, and compromise with numerous Senators, and, as one who has been intimately involved in those negotiations and compromises, I can say they are compromises I am prepared to support. I do not, however, feel there is much more room for compromise if we are to have a bill that has any meaning.

With respect to the antitrust issue, the bill makes a procedural reform in the existing Webb-Pomerene Act by permitting the issuance of a certificate providing an antitrust immunity for the activities specified in the certificate for the period of time the certificate is in effect. The language of this title does not modify substantive antitrust law. My colleague, Senator DANFORTH, the author of title II, will have more to say about this shortly.

Mr. President, I would also like to make a brief point about one issue in the bill that has come up recently.

Nothing in the bill is intended as an override of existing State authority over State-chartered institutions. Limitations which now exist by force of individual State statutes or regulations that would affect the ability of State-chartered banks to take equity positions in export trading companies are not preempted. Furthermore, because no override of existing State regulatory authority is intended, nothing in the bill can be construed as preventing States from adopting laws or promulgating regulations which would prohibit, condition, limit, or restrict investments by banks chartered under the laws of any State. That is the intent of section 105(a) of the bill.

To the extent that State-chartered institutions are not prohibited by State statute or regulation from taking any equity position in an export trading company within the meaning of this bill, section 105(b)(1)(B) is not intended to create an exclusive approval right in the appropriate Federal banking agency where a controlling interest is to be acquired, nor is section 105(b)(1)(A) intended to preclude the requirement of State approval for the taking of less than a controlling interest. It is not intended that this bill interfere in any way with the present role of the State banking department as the primary regulator of State-chartered institutions.

I believe the manager for the minority, my distinguished colleague from Wisconsin (Mr. PROXMIRE) may have some comments on the bill and possibly some amendments to it. I will have more, much more, to say about his amendments later, but before I yield to him, I want to express my appreciation for the role he has played throughout the committee's consideration of this bill. I know the Senator from Wisconsin has some reservations about some aspects of the bill, but I think the record should also reflect his consistent cooperation in moving the bill along through the legislative process. I am also indebted to him for raising, in a reasonable and constructive fashion, some basic issues surrounding this bill relating to the role of banks and the antitrust certification procedures. I do not agree with the Senator, and I hope no one else will either, but I think he has raised the right issues and thereby contributed to their resolution in a constructive manner that exemplifies the tradition of this body.

Mr. President, I reserve the remainder of my time.

EXHIBIT 1

THE EXPORT TRADING COMPANY ACT OF 1981

● Mr. HEINZ. Mr. President, on Thursday, March 12, the Committee on Banking, Housing, and Urban Affairs marked up S. 144, the Export Trading Company Act of 1981, and ordered reported an original bill embodying the amendments to S. 144 approved by the committee. The committee report, along with the original bill, S. 734, were filed March 18.

In its markup, the committee did not change the basic provisions of S. 144, but it did adopt 24 amendments, most of them technical, a few of which make substantive changes in particular parts of the bill. For those who have been following this legislation closely, I would like to list briefly the more substantive changes in S. 144 made by the committee.

First. The committee reduced the amount of money authorized in section 108 of the bill for EDA and SBA loans and loan guarantees from $20 million per year to $10 million per year for 5 years.

Second. The committee added a new section 108, proposed by Senator RIEGLE, creating a program which would help small businesses not previously significantly involved in exporting hire an export manager by providing for Federal payment of half the manager's salary for the first year. The cost of this amendment is $2 million per year for 3 years. It is the same amendment which the Senate adopted on the floor last year in its consideration of S. 2718, the predecessor of S. 144.

Third. The committee adopted two amendments initially proposed by Senator CHAFEE which would: (a) Permit a trading company to have the same name as its banking organization investor if the latter owns a majority of the stock of the trading company; and (b) provide the bank regulatory agencies greater flexibility in dealing with violations of section 105(c)(3) of the bill relating to taking positions in commodities, securities or foreign exchange. Both these amendments were recommended by the Comptroller of the Currency.

Fourth. With respect to title II of the bill, the antitrust provisions the committee agreed to an amendment which would permit existing Webb-Pomerene Associations to continue to operate under current law if they so chose rather than being forced to seek certification under the new system created by this bill. Such associations, of course, would also retain the option of seeking certification under the same standards and procedures applicable to everyone else.

The other amendments, Mr. President, were technical in nature, correcting typographical or reference errors or making other minor changes in language, in most cases at the request of the administration. So that all these changes are clear to everyone concerned, Mr. President, I shall ask that the complete text of S. 734, the original bill reported by the Banking Committee, be printed in the RECORD at the conclusion of my remarks.

Reporting this bill represents another important step in our progress toward enacting this legislation and thereby giving American businesses interested in exporting another set of tools to use to successfully market and sell abroad. The committee held 3 days of hearings on this bill this year, in addition to the many days held in 1979 and 1980, and I anticipate that the printed record of the 1981 hearings will be available to Senators and the public shortly. I am also pleased to see that the House is also moving forward with this legislation, the House Judiciary Committee having scheduled hearings on it and other related measures for March 26. The next step should be Senate floor action, which I hope will come soon.

Mr. PROXMIRE. Mr. President, first let me say a word about the senior Senator from Pennsylvania (Mr. HEINZ), for his perseverence in guiding this legislation to the point where it is today. The Senator from Pennsylvania is a tireless worker on behalf of what he believes in. And make no mistake about it, he believes in exports. S. 734 is the first major bill to be reported out of his International Finance Subcommittee, the subcommittee of which he is the chairman. He deserves the congratulations of the Senate for the expeditious, prompt, and efficient way he has handled this bill in committee and is handling it on the floor.

I say that despite the fact that I have two serious reservations about this bill. Both reservations concern how the substantive powers granted in the bill are to be administered. Despite my reservations; I shall vote for this bill. I know that it has virtually unanimous support in the Senate.

The bill passed the last time 78 to 0.

I fully expect that the House Banking Committee will take a closer look at the banking provisions and that the House Judiciary Committee will take a closer look at the antitrust provisions. By the time this bill gets through the House and then through conference and back to the Senate, I believe it will be a better bill. I am convinced the Senate has gone as far as it can, given the politics of the situation, and therefore I would not try to hold this bill up.

I believe we should seek ways to update our export capability. The goal of this bill is to do just that and I support it. Nevertheless, I think we should all recognize that we do not have an export crisis. Last year we had a favorable balance on current account, a unique position in the industrialized world. That is the true measure of our export-import situation because it takes into account all factors.

People are confused when I say current account. The Senator from Pennsylvania talks about the balance of trade. The current account is the overall balance, including trade, including investment income, services, foreign aid. It includes everything. On that basis, we had a balance and I say that is unique. The only other developing countries that had a balance were, of course, the OPEC countries. They have an enormous advantage because they are selling oil at a very high price. Under those circumstances, I do not think anybody could really argue that we have anything like an export crisis or anything but the proper kind of a situation this country should have, which is a balance, meaning that if other countries had the same, we would have far greater equity in trade throughout the world.

We should not be surprised that one segment of the current account, the merchandise balance, is in deficit. That deficit has to do with the price of oil, which quadrupled in 1974 and doubled again in 1979. We will have to find ways to operate more efficiently, to conserve imported oil, if we are to bring the merchandise account into balance.

All the trading company legislation and export legislation will not solve our problem unless we recognize that the fundamental problem is an energy problem.

One thing is sure. Our situation is not of such a magnitude that we have to throw out the separation of banking and commerce that serves our economy so well. Neither do we have to forego our antitrust laws which have given us the benefit of a free and competitive economy, probably the most competitive economy of any country in the world. That is one of the reasons why we have been the dominant economic country in the free world, and continue to be.

The AFL–CIO, which has as much at stake as anyone else in a healthy economy, opposes this bill. In a statement on the bill the AFL–CIO said:

> The AFL–CIO supports exports that promote U.S. jobs and help create a healthy U.S. industrial base. Many industries, including those that provide services, need and deserve the help of the U.S. Government in an increasingly complicated international trading world.
>
> We do not believe S. 734 will accomplish these objectives and we oppose it.
>
> This bill ends the traditional U.S. legal separation between banking and commerce, a risky move in a world where international banks are already "loaned up" and government insurance of exports is at issue in other hearings. The lender and exporter can become one under this legislation—a damaging change in U.S. law.
>
> At a time when banks and commercial enterprises in the United States are claiming capital shortages, a measure that will result in a further competition for funds and diminution of capital for productive investments is unwarranted.
>
> Title II extends antitrust exemptions of the Webb-Pomerene Act to associations formed for the purposes of exporting services and to export trading companies. Exempting the nation's largest banks and an unidentified number of existing international lawyers, accountants and other so-called service firms will add to the competitive problems of many businesses at home.
>
> What appears to be developed in the bill is a double standard on competition—one for U.S. exporters and another for U.S. producers. The exporters may be giant world companies or banks exempt from U.S. law on antitrust. Trade would be special privilege while all U.S. activities would be subject to competitive laws.

Mr. President, the Conference of State Bank Supervisors (CSBS), which is comprised of the 50 State banking commissioners opposed this bill as an unwarranted intrusion on States rights.

I understand that Senator HEINZ will offer a statement on the floor ameliorating some of their concerns.

Furthermore, the Independent Bankers Association originally opposed this bill as written. The Securities Industry Association and the Independent Insurance Agents also oppose the bill as written.

Why? Because the legislation goes too far. It does not take the care that needs to be taken to continue the benefits of separating banking from commerce and it needlessly puts the antitrust laws in a back seat relationship to trade promotion.

Mr. President, There are two serious defects in this legislation.

One serious defect is that the significant and historical precedent setting power for banking organizations to control up to 100 percent of export trading companies engaged in business and commerce will be administered by three separate bank regulatory agencies. In the past when Congress enacted bank legislation authorizing new activities regulatory authority has been given to the Federal Reserve.

Another serious defect is that the Justice Department and the Federal Trade Commission have been shunted aside as primary antitrust enforcers of the antitrust laws governing foreign commerce from the United States in favor of the Commerce Department whose primary mission is to promote and trumpet trade.

The Secretary of Commerce admitted that they did not have the expertise or competence in his Department to regulate antitrust matters.

Thus this legislation will undoubtedly

result in inconsistent, wasteful, and overlapping bank regulation instead of a consistent and coherent bank regulatory policy; and will result in less competition while price fixing in domestic and international markets gets a wink from the Commerce Department.

This is major legislation: Major bank legislation and major antitrust legislation. Banking organizations—banks, bank holding companies, and Edge Act international corporations—are given the power to control export trading companies which are permitted to engage in a wide range of export and import activities not only as financiers but as equity participants. An export trading company is permitted to purchase for its own account goods and commodities, warehouse them, and market them overseas through its own retail network. The separation between banking and commerce which has served this Nation well for over 100 years has prohibited such activities by banks.

If we pass this legislation, that separation will be ended with respect to that particular part of banking and commerce.

The Federal Reserve and the Federal Deposit Insurance Corporation, the two regulatory agencies which are responsible for the safety and soundness of our banking system, testified that bank control of export trading companies posed unacceptable risks to our banking system. Their recommendation was that exports could best be served by banks continuing their role as financiers, holding a minority position perhaps in export trading companies, but not a position which would jeopardize bank capital in the highly leveraged risk operations of an export trading company.

Our export posture is not one that requires that we put our financial system at risk. We already have enough risk in our financial system.

I offered an amendment in committee which would contain the risk yet let the legislation move forward. This amendment would have allowed control of an export trading company by only a bank holding company or an Edge Act International Company. The benefit of my amendment is that it would continue to require separation between banking and nonbanking activities and would lodge authority in the Federal Reserve to administer the provisions. That is consistent with our existing banking structure where nonbank activities are carried out through the holding company and through Edge Act Corporations. Both the bank holding company laws and the Edge Act are administered by the Federal Reserve.

The Senate, on occasion, closes its ears to meritorious responses to questions raised by legislation. This is one of those occasions. Thus, the Senate will send to the House a bill that mixes banking and commerce unnecessarily. I trust the House Banking Committee will clarify the situation.

By recommending that the Commerce Department play the key role in administering the Sherman Antitrust Act in place of the Justice Department and the Federal Trade Commission, this administration continues its assault on the antitrust laws.

The legislation rewrites the Webb-Pomerene Act. Currently, adherence to the provisions of the Webb-Pomerene Act provides a defense against suit under the Sherman Act for export associations. This legislation goes further. An export association, upon making an application to the Commerce Department, may obtain certification by the Commerce Department that its activities meet the standards of the legislation.

Such a certification carries with it immunity from not only the Federal antitrust laws but also from State antitrust laws and private party suits, except for ultra vires acts.

This intrusion into the realm of State's rights and private rights might be plausible if a Federal agency with antitrust experience was charged with the responsibility of administering the statute. That is not the case here. The Commerce Department will issue the certificates upon consultation with the Justice Department and with the Federal Trade Commission. The legislation leaves it up to the Commerce Department to determine the degree to which it considers the views of the Justice Department and the Federal Trade Commission.

While the Justice Department and the Federal Trade Commission may file suit within 30 days after the issuance of a certificate by the Commerce Department on the grounds that the export association's behavior violates the standards set forth in the Webb-Pomerence Act, it is clear that the real action in administering the law will be in the granting of certificates—and who has that power? The Commerce Department.

The Commerce Department is in a massive conflict-of-interest situation under the legislation, having responsibilities to promote trade and enforce the antitrust laws. It is clear that the antitrust laws are going to take a back seat. And why? The antitrust laws have served this Nation well, giving us a marvelous free and open competitive society. They are now to be placed on the scrap heap because the Justice Department and the Federal Trade Commission have done their job in enforcing the law, and they are going to be taken out of the act by this bill.

The true test of competition is whether there is a market restraint on prices. The authors of this legislation told us that this legislation did not change the substantive standards under the antitrust laws. Yet, when the antitrust experts came before the committee, we were told that the legislation is:

> An attempt to codify what many people who participated in this process consider to be the best thinking on what the law should be interpreted to be by the courts.

That statement makes it obvious that a good deal of judgment went into the alleged codification.

It is clear from the testimony of Secretary Baldrige that, where U.S. firms fix prices overseas or allocate markets overseas, he intends to certify the behavior even though such behavior is actionable at the present time under the antitrust laws. It was precisely this kind of behavior in overseas markets that caused the Wall Street Journal to say in an editorial—this is the Wall Street Journal, not the AFL—CIO—

> By endorsing and expanding the principle of export cartels, the legislation undermines U.S. commitment to an open international trading system. How can we complain about OPEC or Third World cartels if we encourage our producers to form their own export cartels?

Mr. President, it is clear that the Commerce Department will not have the stomach to stand against price fixing overseas. How will they administer the act when the effect is on domestic prices? I do not know, but I have my doubts. Commerce will find itself in a basic conflict position of trying to balance effects on domestic prices and overseas trade.

The Commerce Department has no expertise in administering antitrust statutes, according to Secretary Baldrige's own testimony. Yet they are entrusted with administering a complex statute. For example, under the legislation, one of the changes made is to prohibit effects on domestic prices that are "unreasonable," terms of art under the Sherman Antitrust Act. But with respect to price-fixing under the Sherman Act, no inquiry is permissible as to "reasonableness" or "unreasonableness."

Price-fixing is one of those categories of antitrust behavior that is per se unlawful. Where price-fixing is found, it is always held to be "unreasonable" under current law.

Now comes this legislation, providing that only behavior that does not "unreasonably enhance, stabilize or depress prices within the U.S." is permitted. Price-fixing is to be allowed, is it not? Is that not what that means? How much price-fixing is reasonable or unreasonable? And the Commerce Department, which has no experts, no experience, no background in antitrust laws, is to administer the law while the experts at the Justice Department and the Federal Trade Commission sit on the sidelines. I hope the House Judiciary Committee refines the antitrust sections substantially, and there is every indication they will do so.

Thus, Mr. President, we have before us a bill that proves the worth of having two Houses of Congress. The Senate has a good concept, but goes too far, perhaps even in anticipation of the expected cutback in the bill in the House. I hope the House will perform the needed surgery on this bill and the Senate should not expect to see quite the same bill when it returns from conference.

Mr. President, I ask unanimous consent that letters from the Independent Banker's Association, the Securities Industry Association, the Independent Insurance Agents and the Conference of State Bank Supervisors be printed in the RECORD following my remarks.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

INDEPENDENT BANKERS ASSOCIATION OF AMERICA,
McHenry, Ill., September 2, 1980.

Hon. WILLIAM PROXMIRE,
Chairman, Banking, Housing, and Urban Affairs Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR CHAIRMAN PROXMIRE: As the Senate continues to deliberate the merits of S. 2718, the Independent Bankers Association of America deems it appropriate to present its views on the Proxmire-Federal Reserve Amendment (Amendment No. 2276) which would prevent a single banking organization from owning more than 20 percent of an export trading company or group of banking organizations from owning more than 40 percent of an export trading company, except under extraordinary circumstances.

Just as the IBAA opposes the concentration of banking resources, it opposes the dominance by a few large banking organizations of the export trading company area. We believe that the Proxmire-Federal Reserve Amendment (Amendment No. 2276) will help preserve the separation of banking and commerce and prevent the excessive concentration of economic power. Therefore, we support it.

Sincerely,

THOMAS P. BOLGER,
President.

SECURITIES INDUSTRY ASSOCIATION,
Washington, D.C., March 30, 1981.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: The Securities Industry Association is extremely concerned as to the breadth of S. 734, legislation which would extend to the banking industry the ability to form and participate in export trading companies. We understand the bill will be considered by the Senate this week. While we can recognize a clear and compelling need to improve our export posture and balance of payments abroad, we seriously question whether or not commercial banks should be permitted to engage in this extremely high risk area of commerce.

Our membership believes this bill, as written, presents a situation where major money center banks without the appropriate regulator's approval, could direct a captive export trading company to engage in the underwriting, selling, and distributing of securities and commodities that would otherwise be prohibited by both the Bank Holding Company Act and the Glass-Steagall Act. We believe this to be a fundamental breach of the Glass-Steagall Act in an area which was not thoroughly explored during Senate Banking Committee consideration. It is our hope that Congress, during its consideration of this legislation, will amend S. 734 to prohibit this kind of circumvention of existing legislative restrictions on commercial banks and bank holding companies.

Sincerely,

EDWARD I. O'BRIEN.

INDEPENDENT INSURANCE AGENTS OF AMERICA INCORPORATED,
March 9, 1981.

Hon. WILLIAM PROXMIRE,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR PROXMIRE: Our association would like to raise serious objection to certain provisions of the Export Trading Company Act, S. 144, now before the Senate Banking Committee.

In general, the Export Trading Company Act's stated purpose represents a dramatic policy shift from the more than 100 year separation of banking and commerce—a separation that this association, in connection with other legislation now before this committee, has fought hard to retain.

The encouragement and facilitation of bank participation in and ownership of export trading companies is bound to have adverse implications for many small businesses not privileged to have access to banks' capital, credit, financial records, and expertise. Moreover, any advantages to export trading company clients that may derive from a bank's ability to engage in a full range of export services through an export trading company may be more than offset by non-competitive tie-ins of these services to credit.

Specifically, language contained in Sections 103(a) 3 and 4 of the Act virtually ensures adverse impact on a now thriving and highly competitive non-affiliated export insurance market, and on potential export trading company clients.

That section includes within the definition of collateral services to be provided by export companies the term "insurance." Since not qualified in any way, the term could be interpreted to include insurance sales, services, or underwriting, for domestic or international coverages, within the context of onshore or offshore insurance operations.

Additionally, the proposed bill contains no language that would protect export trading company clients from direct or implied tie-ins of insurance sales to the credit and managerial services the companies will be offering.

Moreover, it is unclear from the Act, or from any previous committee record, whether all of the permissible insurance services are to be subject to the traditional state regulatory apparatus established by the McCarran-Ferguson Act. Specifically, it is unclear whether, if included within definition of insurance, offshore export insurance captives are intended to be subject to state regulation, or will be able to escape the rigors of state oversight and enforcement.

Export trade insurance services are available today from many sources at competitive prices. Introduction of additional sources, of undefined scope, unfairly advantaged by access to capital, credit, and managerial services, would seem at best unnecessary and at worst extremely harmful to existing markets and potential clients.

IIAA would propose as a remedy the deletion of the word "insurance" from sections 103(a) 3 and 4. Additionally, the committee's report should make explicit the committee's awareness of the dramatic shift in heretofore traditional public policy that enactment of S. 144 would engender, including possible adverse effects on businesses now associated with export trading, but denied access to the competitive advantages export trading companies will enjoy should this bill become law.

Sincerely,

ROBERT REYNOLDS, CPCU,
President, IIAA.

MARCH 23, 1981.

Hon. WILLIAM PROXMIRE,
Dirksen Building,
Washington, D.C.

DEAR SENATOR PROXMIRE: You will soon be voting on S. 144, The Export Trading Company Act of 1981. The Conference of State Bank Supervisors opposes this legislation because, as currently drafted, it would override state authority over state-chartered institutions and would violate the principle of the separation of banking and commerce.

CSBS asks that you support the Proxmire amendment to limit control of export trading companies to bank holding companies, Edge Act Corporations and bankers banks. The Proxmire amendment would eliminate the preemption of state authority and would lessen to some degree the erosion of the policy of the separation of depository banking activities from other forms of commerce.

Representing the primary chartering and regulatory source for state-chartered commercial banks, the Conference strongly objects to those provisions in S. 144 which would permit state-chartered commercial banks to take equity positions in business enterprises in violation of state banking codes banning such action. This proposed action would constitute a serious preemption of state authority to determine the operating powers of banks which they charter and supervise. In the absence of some overriding national policy consideration, which we do not perceive here, CSBS objects to any statutory provisions which would enlarge state-chartered banks' powers beyond those which a state authorizes for its institutions.

CSBS supports Congress in its efforts to increase U.S. exports, but believes that goal can be achieved more effectively by reducing government-related burdens on producers of goods and services which might be sold abroad. American industry can be competitive in the international marketplace if we allow it to be. Oppressive taxation, government-fed inflation, consequent high interest rates, high labor costs and direct control adversary-type government regulations, all merit attention ahead of another government program—particularly one which has all the ingredients of more, not less, regulatory burdens. Until the underlying causes of our industrial malaise have been addressed, no program, no matter how well intentioned, can succeed.

Moreover, the principle of the separation of banking and commerce, a cornerstone of our policy against undue concentration of economic power, should not be abandoned without proven necessity to do so. Bank equity in nonbanking enterprises, like government equity, presents a very real danger of credit allocation.

For all of these reasons, the Conference of State Bank Supervisors asks that you support the Proxmire amendment and oppose final passage of S. 144.

Sincerely,

LAWRENCE E. KREMER,
Executive Vice President-Economist.

Mr. PROXMIRE. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SCHMITT). The Senator from Massachusetts.

Mr. TSONGAS. Mr. President, this is an issue that is coming back. As the Chair knows, we dealt with it last year. The vote, I believe, was 77 to 0, or 78 to 0, something of that magnitude.

The reason there is such broad support is, I think, a growing awareness of the need for an aggressive export policy. Though there are many components of that, certainly, export trading companies are part of it.

Mr. President, in the last 5 years, our trade deficit totaled $105.7 billion. There are many ways of looking at that, but the fact is that this hemorrhaging of U.S. capital has weakened the collar in overseas markets and inflated the costs of imports to Americans. Look at our German and Japanese competitors, who make export trade a top priority. In the same 5-year period, they have had total trade surpluses of $88.8 billion and $55.6 billion respectively.

I might add that these two countries import a much higher percentage of their energy than we do.

We must reduce this trade deficit. The Commerce Department estimates that less than 1 American firm in 10 sells overseas. This record must be improved. If we continue to believe that the status

quo provides ample trading possibilities, we may soon find America reduced to the status of a glorified banana republic ever diminishing our raw materials and awash in imported manufactured goods.

The bill before us attempts to improve this situation. It makes possible the formation of American export trading companies to deliver the output of small- and medium-sized American businesses to the marketplaces of the world. Export trading companies would represent American firms abroad and perform international market research, customs documentation, and regulations research. They would have expertise in exchange rate issues and foreign market potential.

I would ask Members to go around their States and talk to their small- and medium-sized businessmen and ask how many of those are familiar with exchange rate issues and other such matters critical to international trade.

The Commerce Department estimates that more than 20,000 nonexporting U.S. firms offer products that could compete abroad. Export trading companies are an attempt to tap this vast potential.

Title I of S. 734 allows banks to participate in the formation of export trading companies. Banks bring to bear their investment capital, international networks, and international financial expertise, and as such are the institutions that have the best chance of making export trading companies significant contributors to increased American exports. Bank controlling intrest in ETC's is permitted, with strict constraints, to assure banks the opportunity to use their international financial aid management skills fully. A number of safeguards are in place to prevent bank abuses:

Banking organizations can invest no more than 5 percent of their assets in export trading companies.

Approval of the appropriate bank regulators is necessary for investments in excess of $10 million or if controlling investments by the bank exceed 50 percent of the stock of an export trading company.

I, for one, find these restrictions to be somewhat excessive, but within the framework of trying to provide the proper assurances, I can live with them.

Mr. President, let me stress that export trading companies are an idea that business leaders in New England are fully behind. In my own State of Massachusetts, my small business advisory task force is eager for the enactment of S. 734. The Small Business Association of New England strongly endorses export trading companies. The New England Congressional Institute's export trading company task force, consisting of 15 economists, bankers, and businessmen, also believe the export trading company idea deserves attention. Two banks in my State, the First National Bank of Boston and the Shawmut Bank are keenly interested in the bill. In addition, I have met with a number of textile manufacturers in this past year and found it refreshing to listen to their support for export trading companies as a means to compete internationally. A Department of Commerce study indicates that American textile manufacturers could benefit significantly from this bill. I suggest that international competitiveness is a much better option than protectionism.

Mr. President, this bill is a start in a much needed effort to improve our international trade competitiveness. It means jobs for Americans and help in paying our huge oil debt. We cannot afford to pass up this opportunity. I am confident that, as last year, the Senate will pass this measure—without dissent, it is hoped.

Let me talk about some of the issues that have been raised in opposition, which are the same issues raised last year. The problem, in the meantime, has not gone away.

One argument put forth is the idea that there is no trade problem. Exports are growing, so why worry? I must point out that even though U.S. exports have grown in the 1970's from 4.3 percent of our GNP to 8 percent today, we are in fact losing ground in the growing overseas markets. The U.S. share of the total world market in 1970 was 15 percent; in 1980, it was 12 percent. The U.S. share of the manufactured goods total world market has gone from 21.3 percent to 17.4 percent.

Second, let me talk about the current account issue. Those who argue that we do not have a crisis because the current account is in balance are half right and half wrong. They are absolutely correct that the current account is in balance. They are absolutely incorrect, in my opinion, that that is cause for great comfort. There are several reasons why I feel this way.

First, any rapid growth in foreign investments here would rapidly offset the return in our foreign investment there, so our strength is a reflection of what our trading partners have not yet done but are increasingly doing. The advantage we have by the balance of current accounts is a function of noninvestment by foreigners in this country; and as everybody knows, that is changing rapidly. So the advantage we have is illusory. It is a function not of our strength but of decisions made by others.

Second, the recent jump in recorded return on foreign investment is caused to some degree by companies bringing funds back to America to take advantage of high-interest rates. This is a temporary and rather artificial source of strength.

Third, living off returns from foreign investments is sort of coupon-clipping writ large. It is a static benefit derived from past competitiveness. It is no substitute for present competitiveness. To have the edge which enables you to invest abroad successfully requires a lead in technology, production, and management know-how. No return of a foreign investment can continue if there is not movement up the product scale and a retention of the competitive edge.

There are also those who would argue that we do not have an export crisis but that, in fact, what we are dealing with is simply a problem that results from the price of oil going up dramatically. That is true. Our ever growing oil bill certainly creates our trade problem.

The Japanese and the Germans, however, who import a higher percentage of their energy than we do, have taken an activist position to insure their own economic survival. They have done what is necessary to pay their oil debt in a competitive world economy; they have made trade their No. 1 priority. That is a mind set we do not have in this country and must rapidly assume.

Finally, one can argue against export trading companies because of fear of expanding the powers of banks. I think the German and Japanese responses would be simple—that without the capacity to compete internationally we will run up our trade deficit year after year, and soon not have an economy to worry about. That response must become our response.

My State, which has witnessed the decline of the shoe and textile industries, is probably the best example—at least during my lifetime—of a State that has learned dramatically, and to its chagrin, what it means not to be competitive internationally. We in Massachusetts now have an unemployment rate considerably below the national average because of our capacity to produce world class high technology equipment.

If we lose the capacity to compete internationally in this area, what do we then go to? Probably years of decline. It seems to me that we should learn our lesson and do what our international competitors are doing, and that is to take international trade seriously and do what is necessary to be competitive. Export trading companies represent a first step.

There are other important trade issues—Export-Import Bank funding the taxation of Americans abroad—but they are issues for another time.

Today it is my hope that the export trading companies measure will be passed, and passed unanimously as it was passed last year. Then we can work on the House side, to make them see the wisdom of the bill.

Mr. HEINZ. Mr. President, will the Senator yield?

Mr. TSONGAS. I yield.

Mr. HEINZ. Mr. President, I commend the Senator for his statement. I agree strongly with something he said at the close, which is that this is only a part of what we need to do to enhance this Nation's export stance to be competitive.

There are a number of things we have to do in connection with the Foreign Corrupt Practices Act, sections 911 and 913, of the Internal Revenue Code, as well as many other things—the Export-Import Bank, getting some negotiations going in terms of export credit financing practices worldwide, perhaps even a follow-on trade bill to the Trade Agreements Act of 1979.

So I believe the Senator is absolutely correct as to the points he has made, and I commend him for his statement.

Mr. TSONGAS. I thank the Senator for his comments. I will take a Nerox copy of his remarks and send it to the White House.

They are equally persuaded as to the value of the comprehensive approach.

Mr. HEINZ. It is my hope the Senator and I will be able to join together. I think he and I agree.

Mr. PROXMIRE. Mr. President, before the Senator yields the floor, and I know the Senator from Nebraska is anxious to call up an amendment, I shall take a few minutes to call attention of the Senate to testimony before the committee that showed a few things.

It showed in the first place, unlike the arguments made by my good friends from Pennsylvania and Massachusetts, the trade balance has been improving and sharply improving.

As one witness pointed out before our committee on March 3, he pointed out that 1980 was the second consecutive year in which our merchandise trade deficit declined; that in 1980 exports increased $39.9 billion or some 22 percent; that in 1980 our merchandise trade balance with non-OPEC developing countries moved to a surplus of $3.3 billion from a deficit of $3 billion, while the surplus with Western Europe increased to $20.3 billion from $12.3 billion, and that looking solely at nonagricultural exports, 1980 showed an increase of $33.4 billion or some 7 percent by volume.

Let me conclude by saying that Henry Wallich, who is the international finance expert for the Federal Reserve Board and a highly respected international economist, argued exactly the opposite position from what the Senator from Massachusetts was telling us about, the significance of balance on current accounts. He pointed out that overall, if you include everything, investment, income, services, et cetera, overall our position stands in sharp contrast, with that of continental European countries and Japan, all of which are recording deficits on current accounts.

So in both of these areas he has said that we have improved and improved sharply and that overall our current account balance which is in his judgment, and he is a man of very distinguished credentials and highly respected as an economist, the top international expert for the Federal Reserve Board, he feels we are in very sound position and improving.

Mr. TSONGAS. Mr. President, I make just two points.

First, let me say that to argue that our balance of trade is not as bad as it used to be, so we need not worry about it, is the same as arguing that my house mortgage and my car mortgage are less expensive, due to inflation, so I need not worry about paying them. The fact is you have an enormous deficit that you are running, as I have pointed out in my remarks. During the last 5 years, it totals over $105 billion. That is a gigantic deficit that cannot be ignored.

The second point is that these are the same arguments that my distinguished chairman used last year and yet he still voted for the bill. I can only assume that in the deep recesses of his heart, he knows we are right.

Mr. PROXMIRE. Mr. President, may I say I voted for the bill. I think the bill, as I say, overall is all right though there are two parts of the bill that I oppose, and the Senator's statement did not go to those. The antitrust feature of the bill is certainly one of the principal ones and giving the Federal Reserve the centralized power of administering it, is something the Senator did not discuss.

I agree overall it is good to have this legislation. But I think it can be improved.

Mr. TSONGAS. On that note I agree.

UP AMENDMENT NO. 58

(Purpose: To make technical amendments; to remove the establishment of the Office of Export Trade; and to eliminate the term "invalidation" and substitute the term "revocation")

Mr. HEINZ. Mr. President, I send a package of amendments to the desk, four in number, and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection. It is so ordered.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an unprinted amendment en bloc numbered 58.

Mr. HEINZ. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, line 14, strike out "and" and insert in lieu thereof "or".

On page 5, line 16, strike out "and" and insert in lieu thereof "or".

On page 11, line 25, delete ", after notice and opportunity for hearing,".

On page 12, line 5, after "agency" insert ", after notice and opportunity for hearing,".

On page 25, strike out lines 4 and 5, and insert in lieu the following:

"(b) PURPOSE.—It is the purpose of this title to encourage American exports by directing the",

On page 54, strike out lines 7 through 19. Renumber succeeding sections accordingly.

On page 30, line 23, strike out "or invalidation".

On page 40, line 1, strike out "INVALIDATION" and insert in lieu thereof "REVOCATION".

On page 40, line 15, strike out "invalidation" and insert in lieu thereof "revocation".

On page 40, line 20, strike out "declaring the certificate invalid" and inserting in lieu thereof "revoking the certificate".

Mr. HEINZ. Mr. President, there are four technical amendments.

Mr. PROXMIRE. Mr. President, we had an opportunity to review these amendments. They are technical amendments, and I have no objection to them. They are fine amendments. I support them.

Mr. HEINZ. I thank my colleague from Wisconsin.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendment (UP No. 58) was agreed to.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEINZ. Mr. President, before I yield, and I know the Senator from Nebraska has an amendment that he wants to offer, I simply wish to provide for the RECORD a letter we recently received from the Conference of State Bank Supervisors who prior to the discussion we had in the Chamber today did object to the bill on the basis that they thought it preempted State bank regulatory authority.

This letter lays that objection to rest, and I quote in part:

The Conference is satisfied that your explanation, made a part of the legislative history of the Export Trading Company Act, responds adequately to our objection on the points covered. That objection is therefore withdrawn.

Mr. President, I ask unanimous consent that the entire text of this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CONFERENCE OF STATE BANK SUPERVISORS,
Washington, D.C., April 1, 1981.

Hon. JOHN HEINZ,
Russell Building,
Washington, D.C.

DEAR SENATOR HEINZ: The Conference was pleased to learn of your intent to address our concern over the apparent override of state authority over state-chartered institutions contained in S. 734, the Export Trading Company Act.

It is our understanding that you will explain the intent of the bill in the following terms:

"Nothing in the bill is intended as an override of existing state authority over state-chartered institutions. Limitations which now exist by force of individual state statutes or regulations that would affect the ability of state-chartered banks to take equity positions in export trading companies are not preempted. Furthermore, because no override of existing state regulatory authority is intended, nothing in the bill can be construed as preventing states from adopting laws or promulgating regulations which would prohibit, condition, limit or restrict investments by banks chartered under the laws of any state. That is the intent of Section 105(g) of the bill.

"To the extent that state-chartered institutions are not prohibited by state statute or regulation from taking any equity position in an export trading company within the meaning of this bill, Section 105(b)(1)(B) is not intended to create an exclusive approval right in the appropriate federal banking agency where a controlling interest is to be acquired, nor is Section 105(b)(1)(A) intended to preclude the requirement of state approval for the taking of less than a controlling interest. It is not intended that this bill interfere in any way with the present role of the state banking department as the primary regulator of state-chartered institutions."

The Conference is satisfied that your explanation, made a part of the legislative history of the Export Trading Company Act, responds adequately to our objection on the points covered. That objection is therefore withdrawn.

The Conference does, however, reserve its objection to the erosion of the principle of the separation of banking and commerce, absent a proven necessity to do so.

Sincerely,

LAWRENCE B. EXTERTA,
Executive Vice President-Economist.

Mr. HEINZ. Mr. President, there are a number of supporters of this bill that I

wish to take another minute just to read into the RECORD.

These include:

President's Export Council.
National Governors' Association.
U.S. Chamber of Commerce.
American Bankers Association.
National Forest Products Association.
National Association of Manufacturers.
American Association of Port Authorities.
Mining and Reclamation Council of America.
Emergency Committee for American Trade.
National Small Business Association.
American Textile Machinery Association.
Man-Made Fiber Products Association.
American Apparel Manufacturers Association.
Scientific Apparatus Makers Association.
National Machine Tool Builders Association.
American Soybean Association.
Electronic Industries Association.
National Customs Brokers and Forwarders Association of America.
National Federation of Independent Business.
American League for Exports and Security Assistance.
American Electronics Association.
Business Roundtable.
Bankers Association for Foreign Trade.
Task Force on International Trade of the White House Conference on Small Business—Thomas M. Rees.
Acme-Cleveland Corporation.
Commercial Credit Company.
Rockwell International Trading Company.
Philadelphia National Bank.
North Carolina National Bank.
International Trade Operations, Inc.
Export Managers Association of California.
Schueler and Company.
American Institute of Marine Underwriters.
AMERX.

And last, by no means, at least two administrations, the previous one and this one as evidenced by the testimony of Secretary Baldrige, of the Commerce Department, at our hearings.

Mr. President, we are delighted with this broad support of the legislation and delighted to have the support of the Senator from Wisconsin for this legislation and as I say some 61 cosponsors that we have.

Mr. DANFORTH. Mr. President, the United States needs to become an aggressive exporter of its goods and services. One need only look at our growing trade deficit to appreciate that our industries are losing the competitive battle within world markets.

For the first 70 years of this century our Nation had a positive trade balance with its trading partners. For the better part of this century U.S. industry was efficient, had innovative capacity, and was unexcelled in technological leadership. Today, the statistics and the outlook is not that encouraging. In 1977 the United States ran a $26.5 billion deficit, a $26.5 billion deficit in 1978, and a $25 billion deficit in 1979. Last year the trade deficit was approximately $25 billion. The economic stability of our Nation is being swiftly eroded.

In the last two decades the U.S. share of free world exports declined from 15 to 11 percent. Within the last 5 years our major competitors have managed to increase real exports by 4 percent a year, while the value of U.S. exports, adjusted for inflation, has shown little if no growth. Looking at the relative importance of exports as a percentage of GNP, U.S. exports account for approximately 7 percent of GNP in contrast to Japan where exports account for 14 percent of GNP and for 22 percent of GNP in Germany. Something has to be done to spur U.S. exports.

Mr. President, S. 734 is a step in that direction. The bill encourages and provides a framework within which export trading companies may be formed. The bill enables banking institutions to invest in export trading companies under specified and carefully regulated conditions. Further, S. 734 significantly amends the Webb-Pomerene Act of 1918 to clarify the antitrust provisions applicable to export trade associations and provides a certification procedure whereunder export trading companies and trade associations may receive antitrust clearance for specified export trade activities.

Mr. President, I would like to address my remarks to the antitrust provisions of S. 734, specifically title II. Title II finds its origin in S. 864, the Export Trade Association Act of 1979, introduced by myself and Senators BENTSEN, CHAFEE, JAVITS, HEINZ, and MATHIAS on April 4, 1979. Hearings were held on S. 864, and other bills, on September 17 and 18, 1979 before the Subcommittee on International Finance of the Senate Committee on Banking, Housing, and Urban Affairs. A revised version of S. 864 was introduced on February 26, 1980 as amendment No. 1674. Hearings on the revision were held on March 17 and 18, and April 3, 1980. The Senate Banking Committee reported an original bill, S. 2718, which contained amendment No. 1674 to S. 864. On August 27 and September 3, 1980, S. 2718 was considered by the Senate and passed by a vote of 77 to 0. On January 19, 1981, Senator HEINZ, I, and others introduced S. 144. Title II of S. 144 was the same as title II of S. 2718 as passed the Senate last year. Hearings on S. 144 were held before the Subcommittee on International Finance and Monetary Policy on February 17, 18, and March 5, 1981. S. 144 was reported out by the Banking Committee as S. 734.

Before I address myself to the particulars of title II of S. 734 I believe a brief historical background of the current law—the Webb-Pomerene Act of 1918 (15 U.S.C. 61-66) which title II amends, will prove beneficial.

In 1914 Congress directed the Federal Trade Commission to study and report to the Congress on the conditions affecting U.S. export trade. In 1915 the Federal Trade Commission published a report that found American manufacturers and producers when attempting individually to enter foreign markets to be at a disadvantage because of strong combinations of foreign competitors and organized buyers. The report also noted that the threat of antitrust prosecutions under the Sherman Act deterred exporters from carrying out collective efforts to challenge foreign cartels.

In response to the findings of the FTC report, Congress passed in 1918 what has come to be known as the Webb-Pomerene Act. The purpose behind passage of the Webb-Pomerene Act was to provide U.S. exporters with the ability to compete in international markets on an equal basis with their foreign competitors. The Webb-Pomerene Act provides a limited exemption from both the Sherman and Clayton Antitrust Acts to qualified joint ventures in export trade known as Webb-Pomerene Associations. The Webb-Pomerene law exempts from U.S. antitrust laws any association established "for the sole purpose of engaging in export trade" (15 U.S.C. 62) as long as the association, its acts, or any agreements into which the association enters, do not: First, restrain trade within the United States; second, restrain the export trade of any domestic competitor of the association; or third, artificially or intentionally enhance or depress prices within the United States of commodities of the class exported by such association or substantially lessen competition within the United States or otherwise restrict trade therein (15 U.S.C. 62).

The Webb Act defines "export trade" to include only "trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States" (15 U.S.C. 61). As is obvious, the Webb Act does not extend to exports of services.

Mr. President, both the legislative history of the Webb Act, and the administrative and judicial interpretation of the act, shed light on its scope and intended effect.

The debate on passage of the Webb Act was centered on the resolve of two points mentioned in the FTC report. These were: First, that American firms and U.S. exports might be benefited if cooperative arrangements reduced the costs of foreign marketing or enhanced the bargaining power of American firms when dealing with foreign buyers; and second, that domestic trade might be affected adversely if cooperative arrangements enabled American firms either to exploit consumers in the home markets or exclude nonmember firms from the export market.

The legislative history of the Webb Act, including both House and Senate reports and the debates in the CONGRESSIONAL RECORD, evidences that Congress presumed that formation of export trade associations would enable smaller American firms to compete more effectively with large and powerful firms abroad by permitting American sellers to combine and bargain collectively. It was believed that the combined power of American firms would provide the means for entry into foreign markets which previously were blocked by the power and tactics of sellers and buyers abroad.

Early in the history of the Webb Act the FTC issued a letter setting forth its enforcement intentions. In that letter, known as the 1924 silver letter, the FTC announced that an association could qualify under the Webb Act if it existed for no other purpose than to fix prices and allocate sales in foreign markets—as long as the substantive criteria set forth in the act were met—and while foreign corporations were excluded from membership in Webb Associations, these

associations might enter into any cooperative arrangements with nonnationals which might enhance their trade position in foreign markets.

A second determination of the silver letter—permitting restrictive agreements between Webb associations and foreign nationals—was rescinded in 1955. Under the new criteria outlined by the FTC, if export associations enter into restrictive agreements with foreign competitors, those agreements will not be within the antitrust proections of the Webb Act and the lawfulness of the associations' activities will be judged under the Sherman Act, as would similar conduct by an individual exporter.

After issuance of the silver letter it was not until the 1940's that further clarification was afforded the scope of the Webb-Pomerene antitrust exemption through a series of investigations conducted by the Commission known as the 202 series of recommendations. These investigations concluded that a Webb-Pomerene association may not:

Enter into agreements of any kind with domestic producers who are not members of the association which fix prices, terms of sale, or otherwise restrain the free export of goods of nonmember firms. Pipe Fittings and Valve Export Association (1948).

Enter into agreements of any kind whereby exports of domestic nonmember producers are deducted from the export quota of the association. Florida Hard Rock Phosphate Export Association (1945).

Enter into agreements of any kind which prohibit association members from selling to domestic exporters in competition with the association, or which deduct sales by a member within the United States from the member's export quotas through the association. Phosphate Export Association (1946).

Falsely represent that it is the sole export representative of the United States in a given industry. Pacific Forest Industries (1940).

Enter into agreements of any kind with owners or operators of shipping terminals, thereby restricting use of such terminals to only association members. Phosphate Export Association (1946).

Be involved in acquiring control of any patent or process useful in the production of the goods it markets. Sulphur Export Corp. (1947).

Enter into an agreement of any kind which precludes or restricts the right of the association or its members from using a trademark or label in the United States. General Milk Co., Inc., Ltd. (1947).

Enter an agreement of any kind whereby it controls or attempts to control any of the terms or conditions of sales by its members within the United States. Phosphate Export Association (1949).

Enter an agreement of any kind with any foreign producer or cartel whereby the United States is designated as an exclusive trade area, or imports into the United States are otherwise curtailed or restricted. Export Screw Association of the United States (1947).

Own stock, either directly or indirectly through subsidiaries, in corporation or other producers outside the United States. Export Screw Association of the United States (1947).

Enter an agreement of any kind whereby foreign producers are guaranteed the right to sell within a given area a specified tonnage over and above sales in that area by the association. Sulphur Export Corp. (1947).

Enter an agreement of any kind which discriminates among its members as to the right of withdrawal, resignation, or restricting the right of former members to compete with the association after withdrawal. Phosphate Export Association (1946).

Conduct office operations jointly with a domestic trade association. Carbon Black Export, Inc. (1949).

Enter an agreement of any kind to "maintain the status quo" in the world market of the industry and to do nothing which would encourage or increase competition in the industry. Sulphur Export Corp. (1947).

Take into membership anyone who is not a citizen of the United States, nor any foreign purchaser, customer, representative, or agent of a foreign company. Phosphate Export Association (1946).

In 1966 the Commission in advisory opinion No. 91 determined that membership by a firm owning foreign entities is permissible in a Webb-Pomerene association.

Further clarification as to the parameter of the antitrust exemption provided under the Webb Act has been gained through adjudication of a number of cases brought by the Department of Justice. Of these cases there are two major decisions which interpret the scope of the Webb Act.

In the first case, United States against Alkali Export Association (Southern District, New York, 1944) the court found that a Webb association had violated the Sherman Act by participating in foreign cartels that engaged in practices resulting in the use of monopoly power to extinguish the competition of independent domestic competitors engaged in export trade and, which carried out practices that stabilized domestic prices by removing surplus products from the domestic market. In the second case, United States against Minnesota Mining Mfg. (District Court, Massachusetts, 1950) the court held that an export association could not establish or operate jointly owned facilities abroad and then went on to give illustrations of conduct that a Webb association may lawfully carry out: First, an association could be created by a majority of the firms in an industry; second, the association could be used as the members' exclusive foreign outlet; third, members of the association could agree that goods would be purchased only from member producers; fourth, resale prices could be fixed for the associations' foreign distributors; fifth, prices could be fixed and quotas established for members; and sixth, foreign distributors could be required to handle only the members' products.

The Minnesota Mining case provides the most authoritative interpretation of the scope and rationale of the antitrust exemption under the Webb-Pomerene Act. As stated by the court:

> Now it may very well be that every successful export company does inevitably affect adversely the foreign commerce of those not in the joint enterprise and does bring the members of the enterprise so closely together as to affect adversely the members' competition in domestic commerce. Thus every export company may be a restraint. But if there are only these inevitable consequences, an export association is not an unlawful restraint. The Webb-Pomerene Act is an expression of Congressional will that such a restraint shall be permitted.

In enacting the Webb-Pomerene Act, Congress envisioned an eager American business community availing itself of the opportunity to pool its facilities, resources, and expertise in such a fashion as to implement an ambitious joint exporting program. That vision never materialized.

At their high-water mark between 1930 and 1935, Webb-Pomerene Associations numbered 57 and accounted for approximately 19 percent of total U.S. exports. Today the number of associations has dwindled to around 30 and their share of total U.S. exports has dipped to less than 2 percent.

The reasons for this poor showing are *many. To list but a few:*

The business community traditionally has placed top priority on tapping the vast domestic market and has been much slower to focus on the prospects overseas.

The ever-expanding U.S. service industries have been excluded from qualifying for the act's antitrust exemption.

The Department of Justice, and to a lesser extent the Federal Trade Commission have been perceived by the business community as exhibiting a thinly veiled hostility toward Webb-Pomerene Associations. Therefore, the threat of antitrust litigation has served as a deterrent to broader utilization of the Webb-Pomerene Act.

All in all, there remains the strong impression among most parties that the Webb-Pomerene Act is a quaint relic of the past—a cracked plate that is not good enough to be brought out for company and yet not so useless as to be thrown away. This is regrettable, particularly at a time when we are suffering year in and year out $30 billion deficits.

Title II to S. 734 modifies the Webb-Pomerene Act in a way that will permit many more American firms to make use of its updated provisions to promote exports.

Title II does the following:

It makes the provisions of the Webb-Pomerene Act explicitly applicable to the exportation of services. (The National Commission for the Review of Antitrust Laws and Procedures made this same recommendation in its report to the President.

It expands and clarifies the act's antitrust exemption for export trade associations, and provides an antitrust exemption for export companies formed under title I of S. 734.

It requires that the antitrust immu-

nity be made contingent upon a preclearance procedure.

It transfers the administration of the act from the FTC to the Department of Commerce.

It creates within the Department of Commerce an office to promote the formation of export trade associations and trading companies.

It provides for the establishment of a task force whose purpose will be to evaluate the effectiveness of the Webb-Pomerene Act in increasing U.S. exports and to make recommendations regarding its future to the President.

Mr. President, with respect to amendments made to the Webb-Pomerene Act by title II of S. 734 section 201 states the short title of the act while section 202 sets forth findings by the Congress regarding exports and joint exporting activities and the need for amending the 1918 Webb-Pomerene Act (15 U.S.C. 61–66).

Section 203 amends section 1 of the Webb-Pomerene Act (15 U.S.C. 61) and defines the pertinent terms to be used in the amended Webb-Pomerene Act. "Export trade" is amended to include trade in services as well as that in goods, wares, or merchandise. "Service" is defined as meaning tangible economic output and is intended to be an all-encompassing definition, a term not limited by usage relevant to any particular point in time. The term "trade within the United States" retains the definition under section 1 of the Webb-Pomerene Act. The definition of "antitrust laws" is intended to be all inclusive of both Federal and State statutes prescribing the competitive norms within the marketplace. Within the Federal jurisdiction this includes the Sherman Act, the Clayton Act, the Wilson Tariff Act, and the Federal Trade Commission Act. The remaining definitions in section 203 are self-explanatory. It should be noted that the amendments to the Webb Act contained in title II are expanded to include qualified "export trading companies" as well as Webb associations.

Section 204 of title II amends sections 2 and 4 of the Webb-Pomerene Act (15 U.S.C. sections 62 and 64) establishes the scope of the antitrust exemption. Section 2 of the Webb-Pomerene Act exempts from the application of the Sherman and Clayton Antitrust Acts—specifically sections 1 to 7 of title 15 of the United States Code—any Webb association that is established for the sole purpose of engaging in export trade; does not restrain trade in the United States; does not restrain the export trade of any domestic competitor of the association; that does not artificially or intentionally enhance or depress prices within the United States of commodities of the class exported by the association; or does not substantially lessen competition within the United States.

Section 4 of the Webb-Pomerene Act extends the jurisdiction of the Federal Trade Commission Act to include unfair methods of competition used in export trade even though the acts were engaged in outside the United States.

Section 204 of title II establishes a new section 2 to the Webb-Pomerene Act. Section 2(a) sets out the eligibility criteria for the antitrust exemption afforded under the act for export trade associations and trading companies. Section 2(a) establishes six eligibility criteria. They are that the association or trading company and their export trade activities:

First. "Serve to preserve or promote export trade";

Second. "Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association";

Third. "Do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association";

Fourth. "Do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association";

Fifth. "Do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members"; and,

Sixth. "Do not constitute trade or commerce in the licensing of patents, technology, trademarks, or knowledge, except as incidental to the sale of goods, wares, merchandise, or services exported by the association or export trading company or its members."

With the exception of the requirements in paragraphs (1), (4) and (6) of section 2(a) of the act—provisions that impose additional criteria for eligibility in addition to those found in the standards of the current Webb-Pomerene Act—the substantive law of antitrust as modified by the amended Webb-Pomerene Act has not been altered. The amendment of the Webb-Pomerene Act by section 204(a) of title II of S. 734, with the exceptions as noted, is a codification of court interpretations of the Webb-Pomerene exemption to the domestic antitrust laws. In this regard I make specific reference to the decision in United States against Minnesota Mining and Manufacturing Co. which I alluded to earlier in my remarks. Also, the amendment is consistent with the present enforcement policy of both the Department of Justice and the Federal Trade Commission.

As stated by Ky Ewing, Deputy Assistant Attorney General, Antitrust Division, Justice Department, during hearings on S. 864—now title II to S. 734—before the International Finance Subcommittee of the Senate Banking Committee on September 18, 1979:

> We note (that S. 864) would require that a restraint of U.S. domestic trade be substantial before the exemption would disappear. The purpose of this proposal . . . is to bring the Act into what we conceive to be the current state of antitrust law interpreted by the court. (September 17, 18 hearing record on Export Trading and Trade Association, p. 138).

Similarly, Daniel Schwartz, Deputy Director, Bureau of Competition, Federal Trade Commission, testified that the antitrust standards specified in S. 864 "are essentially equivalent to the standards of the Webb-Pomerene Act." (September 17, 18 hearing record on Export Trading and Trade Associations, p. 194.)

In his prepared statement, Mr. Ewing further explained that—

> The judicially accepted legal threshold test for applicability of the Sherman Act to activity abroad places a heavier burden on government and private plaintiffs than that applicable domestically. The presence of a substantial and foreseeable effect on U.S. domestic or foreign commerce is required, not merely some minimal effect. (September 17, 18 hearing record on Export Trading and Trade Associations, p. 144.)

Mr. Ewing also noted in his testimony before the subcommittee that—

> The Department of Justice has long predicated its enforcement efforts in export related matters upon the ability to prove a substantial and foreseeable effect on U.S. commerce. (September 17, 18 hearing record on Export Trading and Trade Associations, pp. 154–155.)

Mr. HEINZ. Will the Senator from Missouri yield for a question on section 204(a)?

Mr. DANFORTH. Yes.

Mr. HEINZ. If section 204(a) is nothing more than a codification of not only current judicial understanding of section 2 of the Webb Act but also the enforcement intent of both the Department of Justice and the Federal Trade Commission, why was it necessary to amend this section of the Webb Act with the exception of paragraphs (1), (4), and (6) as you noted?

Mr. DANFORTH. The amendment is necessary to provide certainty to the business community in their international trade activities, assuring them that their activities do not run afoul of domestic antitrust laws. This is accomplished by establishing a certification procedure and by codifying not only present applicable case law but also the enforcement intentions of the antitrust oversight branches of our Government. Two examples will suffice. Under the present Webb-Pomerene Act if an activity of a Webb association is "in restraint of trade within the United States"—section 2 of the Webb-Pomerene Act—then the international trading activity of that association is not exempt from prosecution under the antitrust laws. When is a "restraint" actionable? When it is de-minimus, insignificant, something more than inconsequential, substantial, or just what kind of measurement is to be employed?

The Court in Minnesota Mining held that the restraint has to be something more than the inevitable consequences of the joint activity of competitors. The Department of Justice stated its enforcement intent under the Webb Act to be against joint exporting activities that have a substantial and foreseeable restraint on domestic trade. It would seem to this Senator that for the business community to be sure as to the circumstances under which its international trade conduct is to be held accountable, that the test judging the conduct be written in law. It is for this reason that "substan-

tial" modifies the phrase "restraint of trade" and "substantially" modifies "lessening of competition" in section 2(a) of the act.

A second example relates to section 2 of the Webb-Pomerene Act which states that a joint exporting activity which "artificially or intentionally enhances or depresses prices within the United States" is outside the scope of the antitrust exemption provided by the act. The point I wish to make here is that for a business venture to rely on such a test—"artificially or intentionally"—is to place reliance on a standard which give a false sense of security to joint exporting activities. The courts in the area of antitrust jurisprudence have developed a test that looks not to the mind—intent of the actors—but to the foreseeable consequences of their actions—the effect. It is for this reason that under paragraph 3 of section 2(a) of the act, the eligibility criteria is that the joint exporting activity does not "unreasonably enhance, stabilize or depress prices within the United States * * *," a test that looks to the effect of the actions not at the intent of the actors.

Mr. HEINZ. I thank the Senator from Missouri for his explanation.

Mr. DANFORTH. It should be noted that the eligibility criteria found in paragraph (6) of section 2(a) of the act requires nothing more than a determination by the Secretary that the international trading activity of the trade association or export trading company not be solely trade in the "licensing of patents, technology, trademarks, or know-how" with the exception that such trade may be present if it is incidental to the sale of goods or services. It is the purpose of S. 2718 to further U.S. export trade in goods and services and not to promote trade in processes or ideas that could well result in the opposite effect occurring.

Mr. President, under section 2(b) of the act an export trade association, export trading company and their respective members that have their trade, trade activities, and methods of operation certified according to the procedures set forth under section 4 of the act and carried out in conformity therewith are exempt from the operation of the antitrust laws be it private or sovereign—State or Federal—enforcement of those laws. The immunity from prosecution under the antitrust laws is complete from the day the certification goes into effect until it is either revoked or rendered invalid pursuant to actions taken under section 4 (d) or (e) of the act. If a revocation or invalidation occurs under the act, the loss of immunity is prospective only.

Mr. HEINZ. Will the Senator from Missouri yield for an injury?

Mr. DANFORTH. Yes.

Mr. HEINZ. Would the Senator, for the benefit of his colleagues, and as the author of title II of S. 734 explain how the antitrust immunity provided under title II, which attaches after certification, differs from the antitrust immunity afforded under the current Webb-Pomerene Act.

Mr. DANFORTH. I would. Under current law, a Webb-Pomerene association that compiles with the filing requirements of section 5 of the Webb Act and which is not in violation of the substantive law standards of section 2 of the Webb-Pomerene Act is exempt from the operation of the antitrust laws but only as to those sections of the Sherman and Clayton statutes set out in the Webb-Pomerene statute. Further, neither the fact of immunity nor the extent thereof is known until an association is sued and obtains a judicial determination that section 2 of the Webb-Pomerene Act has not been violated. What the Webb association has is only a hope. A case in point is United States against United States Alkali Export Association (Southern District of New York, 1944).

In that case a Webb association was charged with entering into agreements with foreign cartels for the purpose of dividing world alkali markets, assigning international quotas, and fixing prices in certain territories other than the United States. The Webb association admitted the agreements but asserted in defense that it had complied with the filing requirements of section 5 of the statute, that its activities were not in violation of section 2 of the statute and therefore the association was immune from prosecution under the antitrust laws. Notwithstanding the association's belief that it was in compliance with the law, the court found to the contrary. The court's holding placed the arrangements employed by the alkali association outside the protective provisions of the Webb Act and exposed the association to liability under the antitrust laws. The Webb association which was organized in 1919 found out, after appeals, that the antitrust immunity which it believed it had for 40 years did in fact not exist.

Under the procedures established by title II of St. 734, a Webb association—or for that matter an export trading company—whose export trade activities have been certified and which association or company acts within that certification knows for certain that those activities are exempt from both private and sovereign enforcement of either State or Federal antitrust laws. The latter, besides encompassing the Sherman and Clayton antitrust laws and the Wilson Tariff Act includes the antitrust provisions of the Federal Trade Commission Act, sections 5 and 6 thereof. The certainty provided through the certification process is not lost until action is taken pursuant to the provisions of title II either to revoke or invalidate the certification. If the latter occurs, the loss of the antitrust exemption is prospective—for future conduct only.

Mr. HEINZ. I thank the Senator. I can see that title II provides certainty to Webb associations and trading companies as to what activities they may undertake without fear of prosecution or suit under the antitrust laws.

Mr. DANFORTH. Under section 2(c) of the act, when a certificate is issued by the Commerce Department, and the Department of Justice or Federal Trade Commission has previously advised the Department of Commerce of its disagreement with a determination to issue a certificate granting immunity under the act, the immunity from the operation of the antitrust laws is held in abeyance for 30 days. This provision is applicable to the issuance of a certificate under section 4(b).

Section 205, Mr. President, provides conforming changes in style to section 3 of the Webb-Pomerene Act (15 United States Code, section 63).

Section 206 amends sections 4 and 5 of the Webb-Pomerene Act (15 United States Code, sections 64 and 65) and adds an additional seven sections to the act. Section 4 of the Webb-Pomerene Act extended the jurisdiction of the Federal Trade Commission Act to include States. Under title II both the Department of Justice and the Federal Trade Commission have authority to seek invalidation of a certificate when the export trade, activities, or methods of operation of the association or trading company no longer meet the requirements of section 2 of the act. One of the eligibility criteria under the act, specifically paragraph (4) of section 2(a), is that of "unfair methods of competition," an antitrust standard uniquely within the expertise of the Federal Trade Commission and a standard which establishes a norm of competitive behavior prescribed by section 5 of the Federal Trade Commission Act. While under the current Webb Act there exists no exemption for joint exporting activity that may be found to violate section 5 of the Federal Trade Commission Act, such an exemption is provided under title II of S. 734.

Section 5 of the Webb-Pomerene Act establishes administrative requirements for associations operating under the act. Each association, within 30 days after its formation, has to submit a statement to the Federal Trade Commission giving details concerning its certificate of incorportion and bylaws. The association must also furnish to the Commission such information as the Commission requests. The Commission may also investigate associations if it believes that the law may have been violated. Recommendations for readjustment can be made by the Commission and if the association does not comply with the recommendations the Commission may refer its findings to the Department of Justice for any appropriate action. Under the present Webb-Pomerene law a Webb association mination was rendered that section 2 of that complies with the filing requirements of section 5 would not know if it had an immunity from the operation of the antitrust laws until a judicial deter the Webb-Pomerene Act had not been violated.

Mr. President, section 206 of title II provides a new section 4 to the Webb-Pomerene Act. Section 4(a) establishes the procedure to apply for certification as either an export trade association or export trading company. The section, specifically paragraphs (1) through (9), describes the information to be included in the application for certification which paragraphs I believe are self-explanatory. Most notable of the informational filing requirements are a description of the circumstances showing that the association or export trading company will

serve a need in promoting the export trade in the goods or services involved, a description of the methods by which the association or company intends to conduct its export trade and any other information which is reasonably available to the applying parties and which is necessary for the grant of certification.

Under section 4(b)(1) the Secretary of Commerce is required to certify an association or company within 90 days after receiving the application. During this 90-day period the Secretary will have the opportunity to consult with both the Department of Justice and the Federal Trade Commission. The purpose for the consultation is to provide an opportunity for the two antitrust enforcement agencies of our government to share with the Secretary of Commerce their respective analysis of and any concerns they may have relative to the eligibility criteria of the act, section 2(a).

Under section 4(b)(1) an association or company will be granted a certificate upon a determination by the Secretary that first, the association or trading company and their respective export trade, trade activities and methods of operation meet the requirements of section 2 of the act and second, that the association or company and their respective activities will serve a specified need in the promotion of the applicable export trade.

Mr. HEINZ. Will the Senator from Missouri yield for a question?

Mr. DANFORTH. Yes.

Mr. HEINZ. There has been some concern raised as to the application of the "needs test" in title II of S. 734. As the Senator from Missouri is aware, in its report to the President and the Attorney General on January 22, 1979, the National Commission for the Review of Antitrust Laws and Procedures concluded that if the Congress determines that it is necessary to continue the Webb-Pomerene exemption it should seriously consider that before any immunity from the operation of the antitrust laws is afforded an association of joint exporters the latter 'be required to make a showing of need." Under section 2(a) of the act, specifically paragraph (1), one of the eligibility criteria for ascertaining whether a certification is to be issued is whether the joint exporting activities "serve to preserve or promote export trade." How is the eligibility criteria of section 2(a)(1) related, if at all, first to the needs showing under section 4(a)(6) and second to the needs determination required of the Secretary under section 4(b)(1)?

Mr. DANFORTH. There is no relationship.

Mr. HEINZ. Would the Senator then explain what is required in the showing of a specified need under section 4 and the reason for the eligibility criteria of paragraph (1) of section 2(a)?

Mr. DANFORTH. The reason for providing an exemption from the operation of the antitrust laws for the joint exporting activities of either a Webb association or export trading company is that without such an exemption, and an exemption which is certain, it would not be reasonable to conclude that such joint exporting activities would be undertaken except on an infrequent basis. Therefore, to encourage such activity, an exemption is available. However, the exemption should only be utilized to preserve, that is to say maintain the status quo, or promote, that is to say add to, export trade. To be eligible for the exemption such a finding—that the association or trading company will preserve or promote export trade—should be made by the Secretary of Commerce. Further, since the existence of that fact is one of six eligibility criteria, the finding would be subject to judicial consideration under a section 4(e) action.

On the other hand, the determination by the Secretary under section 4(b)(1) utilizing information tendered pursuant to section 4(a)(6) is not subject to judicial consideration under a section 4(e) action. The reason behind requiring the Secretary to not only determine that the six eligibility criteria of section 2(a) will be met but that the activities of the Webb association or export trading company will serve a specified need in promoting the export trade covered by the certification is simple.

It was believed that those seeking to avail themselves of the benefit of the Webb-Pomerene exemption should come forward and share with the oversight agency, the Department of Commerce, the reasons they believe their activities will be in furtherance of the export trade of our Nation. The needs demonstration required by section 4 of the act is nothing more than a subjective explanation by the association or trading company as to how its activities will further U.S. trade. The Secretary in his determination will either agree or disagree with that evaluation.

Mr. HEINZ. I thank the Senator. I, too, believe that the needs showing within section 4 contemplates nothing more than a subjective explanation by the Webb association or trading company that the activities of the association or company will further U.S. export trade.

Mr. DANFORTH. Mr. President, the Secretary, under section 4(b)(1) must specify in the certificate the permissible export trade, trade activities, and methods of operation of the association or company. The immunity from the operation of the antitrust laws provided by section 2(b) of the act applies to those enumerated activities.

Under section 4(b)(1) the Secretary must issue the certificate or deny the application 90-calendar days after an application is filed but may extend that process by an additional 30 days with the agreement of the applicant. After an application is filed, by the 45th day, the Secretary is to delivery to the Attorney General and the Federal Trade Commission a copy of any certificate the Secretary proposes to issue. No later than 15 days thereafter—in the case of a certificate delivered on the 45th day, by the 60th day—the Attorney General or Commission may give written notice of an intent to offer advice on the determination. If the Commission or Attorney General does not respond within the 15-day period or formally advises the Secretary of no disagreement with his intent to issue a certificate then the Secretary may issue a certificate at any time.

If the Attorney General or Commission advises the Secretary of an intent to offer advice on the application, then such advice must be provided the Secretary within 45 days of the date the Attorney General or Commission received from the Secretary a copy of the proposed certification. In the case of the Attorney General or Commission notifying the Secretary of Commerce of his intention to offer formal advice on the 60th day after the certificate has been filed the formal advice must be given by the 90th day, since the proposed certificate was tendered to each agency on the 45th day.

The extension of time afforded under section 4(b) applies only to the granting of the certificate and not to the time during which the Attorney General or Commission is obligated to act.

Mr. HEINZ. Would the Senator yield for a question on section 4(b)(1)?

Mr. DANFORTH. Yes.

Mr. HEINZ. What is the purpose of the last sentence of section 4(b)(1)? Is it not the intent of the author of this title that the two respective antitrust enforcement agencies establish a process similar to that utilized for enforcement of the domestic antitrust laws whereby they will reconcile any potential conflict as to which agency will enforce its respective law against a given company or industry in a manner so that all those concerned know that one or the other agency will assume primary jurisdiction?

Mr. DANFORTH. Yes, that is the intent.

Mr. HEINZ. I thank the Senator.

Mr. DANFORTH. Mr. President, section 4(b)(2) of the act provides that an association may request expedited consideration on its application. The time constraints in section 4(b)(1) must still be honored but it is expected that if a need is demonstrated, justifying expedition, then all affected agencies will act in due speed.

Section 4(b)(3) provides automatic certification for existing Webb-Pomerene associations which request such certification within 180 days after enactment of the act. Under the amendment, the certification process for existing Webb-Pomerene associations is to comport with the process applicable to other associations seeking certification under the act, with two exceptions: First, under paragraph (3) of section 4(b) the Secretary's review of the application for certification is to be summary in nature. Specifically, the Secretary is required to determine whether the application shows "on its face" whether a certificate should issue. It is further stated that unless the Secretary "possesses information clearly indicating that the requirements of section 2(a) are not met"—again, by looking at the application on its face and having available the advice of the Department of Justice or Federal Trade Commission—the Secretary must issue the certificate for the export trade, export trade activities and methods of operation that meet the requirements of section 2(a) of the act. Second, when issuing a certificate pursuant to paragraph (3) of section 4(b) the Secretary need not deter-

mine that the association and its activities will serve a specified need in promoting the export trade of the goods, wares, merchandise or services described in the application. An existing Webb-Pomerene association need not have to demonstrate that its existence is in furtherance of U.S. export trade. Such will be presumed.

Section 4(b)(4) provides a mechanism whereby an association whose application for certification or amendment thereto is denied is to be afforded a hearing with respect to that determination pursuant to section 557 of title 5 of the United States Code.

Section 4(b)(4) provides a mechanism whereby an association whose application for certification or amendment thereto is denied is to be afforded a hearing for reconsideration with respect to that determination.

Section 4(c) of the act requires that after certification, if there occurs a material change—meaning something more than inconsequential—related to the association or trading company's membership, trade activities or methods of operation, then an affirmative duty on the part of the association or company exists to report the change to the Department of Commerce. At the time the report is made the association or company may request that its certification be amended.

The antitrust immunity provided by the act continues uninterrupted if the material change subsequently becomes incorporated into the certification through approval by the Secretary of Commerce. It should be noted that upon the failure of the Secretary of Commerce to approve the change such failure does not affect the scope of the underlying certification except as to that part relevant to the material change.

Under section 4(d) the Secretary, after notification to an association or trading company and after affording it a hearing, may require that the association or company amend its organization or methods of operation to correspond to its grant of certification. Further, if the Secretary determines that the eligibility criteria of section 2(a) of the act are no longer met, the Secretary must either revoke the certification or himself make such amendments to the certification to satisfy the eligibility criteria of the act.

Mr. President, section 4(e)(1) authorizes either the Department of Justice or the Federal Trade Commission to bring an action to invalidate, in whole or in part, the certification granted to an association or trading company on the grounds that the eligibility criteria of section 2 of the act are no longer being met.

Once an association or trading company's export trading activity has been certified under the act, the only action provided by law against the association, trading company or their respective members would be either a self-initiated action by the Secretary under section 4(d) of the act or an action by the Department of Justice or Federal Trade Commission under section 4(e) of the act.

Mr. HEINZ. Will the Senator yield for a question on section 4(e) of the act?

Mr. DANFORTH. Yes.

Mr. HEINZ. Would a private party have a cause of action against a Webb association, trading company or their respective members under the Federal, or for that matter, State antitrust laws for injury to it?

Mr. DANFORTH. Section 4(e)(3) of the act provides that only the Department of Justice or the Federal Trade Commission has standing to bring a cause of action in court against a trading company or Webb association for violation of section 2 of the act. Therefore, apart from the complained against activity being ultra vires to the certification, a private party has no standing to bring suit. However, after a certificate has been revoked or invalidated, a private party could have standing to bring an action under the antitrust laws based on activities subsequent to the revocation or invalidation.

Where a private cause of action has been initiated, claiming that a Webb association is acting ultra vires to its certification, a court would not be able to infer from the acts of the Webb association any anticompetitive effect or intent until it first determines that the acts of the association were in fact ultra vires to the certification. If an ultra vires act is determined to be present, then the court may proceed with its inquiry and determine whether it may infer from that ultra vires act the requisite intent and anticompetitive effect under the antitrust laws.

I would also point out that a private party who may be "aggrieved by an order of an appropriate banking agency" pursuant to section 105(e)(1) of S. 734 (title I of the legislation) may not employ the broad standing provision of section 105(e)(1) in order to obtain standing against an export trading company or association with respect to its export trade, trade activities and methods of operation.

Mr. HEINZ. I thank the Senator.

Mr. DANFORTH. Under section 4(e)(1), before the Department of Justice or Federal Trade Commission may sue to invalidate a certification, it is required to notify the affected parties 30 calendar days in advance. It is anticipated that this 30-day period will allow sufficient time for the parties to resolve their differences, if at all possible. The 30-day notification period is not applicable to an action seeking a restraining order under section 4(e)(2).

The authority of the district court under an action for invalidation is to consider the issues de novo. The only issues that are before the court are whether the requirements of section 2(a) of the act, the eligibility criteria, are being complied with by the association or trading company. While the Secretary of Commerce must consider the requirements of section 2(a) and determine that the activities of the association or trading company will serve a specified need in promoting the applicable export trade in order to issue a certificate, the specified need determination of the Secretary is not an issue which is subject to consideration by the district court in a section 4(e)(1) action.

The district court in a section 4(e)(1) action may either issue an order invalidating the certificate, after which the association or company may continue to exist but does so without the protection of the antitrust immunity of section 2(b) of the act, or require the association or company to modify its organization or methods of operation in order to comply with the requirements of section 2(a) of the act.

Under section 4(e)(2), during the 30-day period, the effective date of the grant of certification is held in abeyance, the Department of Justice or Federal Trade Commission may seek an applicable order prohibiting the certificate from taking effect. It is anticipated this right of action granted by section 4(e)(2) will be used sparingly. This provision for a temporary restraining order or prohibition is applicable to the issuance of a certificate pursuant to section 4 of the act. Further, the common law requirements applicable to the granting of either a temporary restraining order or preliminary injunction must be met by the moving party before the court can issue such an order. Congress means for this not to be an easy burden to overcome.

The provision for the restraining order or prohibition was added at the request of the Department of Justice. It exists as a safety valve where, in the opinion of the antitrust enforcement agencies of our Government, the Secretary of Commerce intends to issue a certification to either a Webb association or a trading company and there exists, on the face of the certification, obvious violations of section 2 of the act. The sole issue before the court is whether on the face of the certification there exists such obvious violations of section 2 of the act that a restraining order or prohibition must be issued.

Under section 4(f) trading companies and associations are obligated to comply with U.S. export control laws. Under section 4(g) final orders of the Secretary of Commerce are subject to judicial review under chapter 7 of title 5 of the U.S. Code.

Mr. President, section 5 of the act mandates that within 90 days after enactment, the Secretary of Commerce, after consulting with both the Department of Justice and the Federal Trade Commission, publish proposed guidelines. The guidelines are to relate to the process by which the Secretary of Commerce will reach his determinations under section 4 relative to whether the requirements of section 2 of the act are being met. The guidelines shall be periodically reviewed and revised where warranted.

Sections 6 and 7 of the act are self-explanatory. Section 8 of the act requires that portions of applications, amendments and annual reports that contain trade secrets or confidential business or financial information, which if disclosed could competitively harm the party submitting the information, be held confidential and not disclosed except as provided under section 9(b). The latter section, under specific circumstances, allows disclosure to the Attorney General or Federal Trade Commission. Sections 9, 10, and 11 of the act, I believe, are also self-explanatory.

Mr. President, section 207 of title II would add a new section to the Webb-Pomerene Act. The purpose of this new section would be to grandfather existing Webb-Pomerene associations so that their ongoing operations would not be affected by the changes to the Webb-Pomerene Act proposed by title II of S. 734.

I believe, Mr. President, that any export trade legislation must insure that existing Webb-Pomerene associations have the election to continue their operations unimpeded. Existing association operations that involve many millions of dollars of capital investment, long-standing course of dealings and long term contractual obligations should not be jeopardized. Care must be taken to insure that there is no temporal discontinuity with regard to the antitrust immunity enjoyed by such associations and that any modified system of antitrust immunity be, at a minimum, coextensive with what immunity currently is available to Webb-Pomerene associations.

The provisions of section 207 would permit Webb-Pomerene associations in existence as of January 1, 1981 to continue to function under the provisions of the prior law if they so elect. Further, section 207 would authorize Webb-Pomerene associations in existence on January 1, 1981 to apply at any time for certification under the revised act.

The proposed section 207 reflects a recognition that existing associations differ from new potential applicants because they have invested time, personnel and resources in reliance on the present exemption. Its provisions would encourage application for intended benefits of certification, while at the same time making clear that there is no desire to impose that process or to jeopardize or dislocate those who have lawful investments and activities presently in place which in 1980 contributed in excess of $2 billion annually to our Nation's balance of trade. Those associations who seek certification are allowed to decide whether they will accept it. They thus are assured that to seek certification will not put at risk any of their existing investment. In essence this is the same choice facing all applicants: freedom to choose the benefits of the new law or to remain under the status quo.

UP AMENDMENT NO. 58

Mr. EXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Nebraska (Mr. EXON) proposes an unprinted amendment numbered 59:

At the appropriate place, add the following section:

schedule of phased decontrol of natural gas prices embodied in the Natural Gas Policy Act of 1978 continues to be sound public policy which should not be altered."

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. EXON. Mr. President, this is an amendment which expresses that it is the sense of the Senate to support the objectives of the Natural Gas Policy Act which has to do with phased decontrol of natural gas under title I of the Natural Gas Policy Act of 1978.

The administration has voiced some support for accelerating the schedule set forth in this act decontrolling the wellhead price of natural gas.

This resolution which I present to the Senate today would send a clear message to the administration and the Nation that this body does not support immediate decontrol of natural gas prices.

The overriding purpose of the 1978 act was to encourage more domestic natural gas production by gradually decontrolling prices.

The overwhelming conclusion by the industry is that the aim of title I is succeeding.

Domestic natural gas production increase in 1979 from about 19.3 trillion cubic feet in 1978 to 19.9 trillion cubic feet, the first increase since 1972.

Additions to proven reserves in 1979 increased 35 percent over 1978 figures.

In fact, the gas industry is currently experiencing a significant surplus of gas supplies. Industry sources have indicated that there is perhaps even more gas to sell than the pipeline has places or buyers to purchase the product.

The NGPA established a gradual decontrol schedule for new gas. The price is allowed to go up monthly and at an annual rate of the annual rate of inflation plus 4 percent until 1985.

(Mr. QUAYLE assumed the chair.)

Mr. EXON. Consumers, of course, will feel the increases regardless of the different pricing categories. The pipelines purchase both old and new gas from producers, and even though two-thirds of our total supply is characterized as old gas, sales are made on a rolled-in price basis where the cost of old and new gas is averaged together in the retail price.

The phased decontrol schedule contemplated in the 1978 act was a compromise measure, designed to protect consumers as well as provide incentives to producers. The administration's consideration to accelerate decontrol will destroy the delicate balance of that compromise which was hammered out in several endless days of committee work. Accelerating decontrol of natural gas prices will dramatically tip the scales in favor of the gas producers.

Mr. President, the Nation's largest gas producers are not unfamiliar players in our continuing energy policy debate. Such firms as Exxon, Texaco, Gulf, Shell, Mobil, Amoco, and Union Oil produce more than 40 percent of our domestic supply of natural gas. Decontrolling natural gas will only accelerate the gusher of profits which the major oil companies have realized from OPEC price hikes and the administration's recent order to immediately decontrol oil prices. These companies would surely experience another explosion in new profits if the remaining controls on gas are removed.

A recent study by the American Gas Association indicated that under total decontrol the wellhead price of natural gas would rise from the current national average of $1.65 per thousand cubic feet to $4.50 or $5.50 per thousand cubic feet. The AGA study concluded that immediate decontrol would double residential heating bills from an average of $494 per home in 1981, to $897 in 1982.

In my State of Nebraska, where 75 percent of the homes use natural gas, residential users could pay at least $330 more in 1982 if gas prices are immediately decontrolled. Prices to industrial users of gas would also double, increasing the cost of goods and services and pushing the inflation rate beyond its already unbearable limits. A recent study by the Energy Action Educational Foundation stated that natural gas decontrol would add from 3 to 5 percentage points to the Consumer Price Index as workers, farmers, and businesses strive to maintain their standard of living and keep pace with rising energy costs.

Let us not compound the terrible rigors of inflation at this time by even considering deregulation of natural gas. If we are really and truly concerned about inflation then we should be against any acceleration in this area.

Mr. President, I quote from the Washington Post of April 4, 1981, in a headline entitled "Food, Fuel Costs Push Price Index Up by 16 Percent Rate." I read from the Washington Post:

Part of the increase in the price index for finished goods, as well as the 1.1 percent riso in the companion index for intermediate goods, was a result of large increases in the cost of refined petroleum products. These came in turn from President Reagan's decision to strip away federal price controls on domestic crude oil, and the continued pass-through of Organization of Petroleum Exporting Countries' price hikes.

For instance, the energy component of the finished goods index rose 6.1 percent last month. That includes a 7.5 percent increase in the price of gasoline charged by a refiner. Similarly, the same component of the intermediate goods index—which covers the cost of, say, heating oil to businesses—rose 4.3 percent.

Mr. President, I use those figures merely to bring home once again that despite our efforts, despite our rhetoric, and despite our goal inflation continues to eat America alive, and if we do anything more to dramatically increase inflation, as accelerated decontrol of natural gas certainly would do, in fact, I say, Mr. President, that such action would pale by comparison the President's decontrol early this year of oil prices.

Natural gas decontrol, like oil decontrol, will have an enormous impact on the farming community which is already overburdened by the administration's policies. In addition to emasculating the farm programs, the administration's consideration to decontr atural gas, like the decontrol of oil will only add to the farmer's co ion in added fuel prices ar pplies such as insec manufactured wi tion, manufactu ment, an imp West, utilize ers use gas grain. All for thes The a not b

producers who will be crying all the way to the bank.

The study by the energy action group also estimated that the value of the major oil companies' natural gas reserves would increase to between $1.3 trillion and $1.6 trillion in 1985, a market value increase of between 800 and 940 percent over the value of their reserves on December 31, 1979. Lifting the controls on natural gas could add $500 billion to oil company revenues between 1981 and 1985 compared to $10 or $15 billion which these companies will realize from oil decontrol.

Already, the oil companies cannot spend all of the money they are making. Even though these firms have invested billions in new exploration activities, their remaining cash pot has allowed these companies to buy heavily into other business ventures as well as into coal and related mineral extraction industries. There is currently a shortage in the drilling equipment market as well as in the availability of drilling crews, and, although exploration activity is at a record alltime high increasing some 35 percent over last year, the industry is hard pressed to prove that they would be drilling much more with additional profits.

What more incentive do these producers need, I ask? Under the NGPA all gas discovered after 1977 is allowed to gradually rise in price until 1985 when, as I said, all controls would be lifted. At that time the price of gas could rise to the world selling price of oil. The producers claim this incentive is too stringent, and that the price of gas should track the price of oil not tomorrow, not in 1985, but now.

The producers have cried a lot but have not made a case for the need to allow a perfect equivalency between the price of oil and the price of natural gas. Oil production is much more expensive than gas production, and some industry sources have admitted there is room for price differentials between gas and oil. Neither has the gas-producing industry proved that decontrolling the price of gas will increase the quality of gas available.

In this Senator's mind, it is debatable that free market economics apply to this situation. OPEC sets the price of oil, and after 1985 will set the price of natural gas. Supply and demand principles are unfamiliar terms in this scenario. In a decontrolled natural gas market, the producers will set the price which the pipelines and the utilities will have to pay. Without alternatives, there is little choice in the matter.

As usual, we consumers are also left with few alternatives. Phased decontrol at least cushions the impact of lifting the cap on gas prices.

Mr. President, this Senator is no stranger to the free enterprise system. As a small businessman myself, I certainly believe that we need to reduce Government intrusion where the normal forces of the market will work effectively. I believe however, that the administration's free market enthusiasts who argue that immediate decontrol of natural gas is necessary to insure additional supplies, are failing to look at the realities of their proposal.

In conclusion, Mr. President, the stakes in this decontrol scheme are enormous. Forty million consumers will lose, and a few gas producers—big oil—will gain hundreds of billions of dollars over the next several years. The economy will suffer as inflation soars upward with the ever-increasing costs of energy. Huge shifts of income will move from the Northeast and Midwest to the gas-producing States of the South and Southwest. Phased decontrol will at least cushion, for a time, the shock to consumers, while at the same time signaling producers that higher price incentives are becoming available.

I would urge the Senate to adopt this measure, sending assurances to the American people that at least Congress recognizes the responsibility it bears in formulating our Nation's energy policy. We certainly cannot afford to pursue a free market philosophy which is not tempered with reason and an overriding sense of equity. The public interest surely demands it.

Mr. RIEGLE. Will the Senator yield?

Mr. EXON. I am glad to yield.

Mr. RIEGLE. Mr. President, I commend the Senator for his amendment and for his leadership and I would like to ask unanimous consent to be listed as a cosponsor of his amendment.

Mr. EXON. Mr. President, I certainly appreciate the fact that my friend from Michigan wants to be added as a cosponsor to this amendment. I am happy to ask unanimous consent that his name be added, if there is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. I thank the Senator.

Mr. EXON. Mr. President, I think it would be well if I could possibly amplify on this matter just a little bit more. I think that we are all concerned about the very grave difficulties we have with inflation today.

Most of us on this side of the aisles, as well as those on that side of the aisles, have, in most instances, supported the President in his overall goals of trying to reduce the inflationary pressure. I would think and hope that the Senate would accept this proposal, because if it does not, then I think the Senate of the United States is saying very simply that, "No, while we vote for budget cuts and while we want to use supply side economics to continue to try and juice the economy, when it really comes down to doing something about further decontrol of basic energy costs that are killing the average Mr. and Mrs. John Q. Public in the United States today, that when we get into that area we do not want to make a stand. We will let the course of the administration continue."

Now what is the present course of the administration in this particular area? About 2 weeks ago, I was with several other Senators and we had a very interesting discussion at some length with the new Secretary of Energy, the former Governor of South Carolina, Mr. James Edwards, who is not only a former Governor with whom I was associated, but a good friend. Toward the end of that particular discussion involving Members of the U.S. Senate and several of our colleagues from the House side of the Hill, I asked the question:

Mr. Secretary, what had been or what will be your recommendation to the President of the United States on acceleration of the decontrol of natural gas prices?

His response, Mr. President, was:

I have made no recommendations to the President at this juncture. We have ordered a study and this study is expected to be completed within the next 60 days.

I suspect, therefore, if the Secretary of Energy's timing was accurate at that time—and I suspect it was—that that would mean sometime within the next 30 days, at the outside, that report would be coming down.

This is clear evidence, it seems to me, as has been widely reported in the press and discussed in the cloakrooms off the Senate floor, that indeed the administration, while not yet having made any final decision, is seriously considering the matter of acceleration of the decontrol of the act that I referred to a few moments ago.

It seems to me, Mr. President, regardless of what the study showed the administration is coming forth with, regardless of that, I think it is critically important that we who are elected here by the people of the United States recognize and realize that the gas producers are now doing very well; that we have more supplies of natural gas now than we ever had before; that the "bubble" in the gas supply lines that we heard a great deal about a few months ago has turned into a huge bulge, and, because of the accelerated drilling for oil, we have had an unanticipated discovery of natural gas supplies.

This being the case, and with the recognition that the people of the United States today are overwhelmed with the increases over which they have little or no control—certainly I feel badly about the fact that gasoline prices at the pump continue to rise. But I recognize that there are other means of transportation if the people can afford it. At the same time, America is a nation that travels on wheels and literally millions of people depend upon their automobiles, which have to run on ever-increasing and staggering costs of gasoline, are a part of their life that they need, that they depend on, and that they have to have. But I recognize that there are some other things that could be done if you have to get from point A to point B.

But when we are talking about natural gas and, as I said earlier, when 75 percent of the people who live in my State depend on natural gas, there is little if any alternative to heating the home during the winter. Therefore, it seems to me, Mr. President, that we should certainly send the signal very loud and send the signal very clear to the administration that the U.S. Senate feels that this would be a wrong time to tamper with that act that was very carefully and time-consumingly put together, which phased out natural gas over a period of time—over a period of time, Mr. President—finally being phased out on January 1, 1985.

Mr. President, I ask unanimous consent that Senator BUMPERS and Senator BIDEN be added as cosponsors.

The PRESIDING OFFICER (Mr. DANFORTH). Without objection, it is so ordered.

Mr. EXON. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ARMSTRONG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, this amendment is a sense of the Senate resolution which reads:

It is the sense of the Senate that the schedule of phased decontrol of natural gas prices embodied in the Natural Gas Policy Act of 1978 continues to be sound public policy which should not be altered.

That, of course, at the present time, is, as the amendment states, public policy. That is present law. It is what the Senate and the House decided in 1978. As a practical matter, the amendment does nothing that is not already the law of the land. Indeed, it does less, because it is only a sense of the Senate resolution.

It is also clearly nongermane to export trading companies legislation. It is an energy issue. It has nothing to do with the Banking Committee. It has nothing to do with international finance, monetary policy, or export policy.

It is my view that, notwithstanding the fact that it is consistent with current law, it just does not belong on this bill.

I personally might be very sympathetic to the policy expressed. Indeed, that was the policy I voted for in 1978. I might support it if it was on another bill. But let me say to my good friend from Nebraska, I just do not think this is the time or the place to debate an energy subject, not on a Banking Committee bill.

We do not have a time agreement on this bill, so technically the Senator from Nebraska can offer any kind of amendment he wants, for whatever purpose he has in mind. But I am strongly opposed to this amendment being added to this bill.

It also has great potential for doing mischief to our legislation over on the House side. Right now there are three committees of jurisdiction in the House, all of whom have claimed a piece of their equivalent of export trading company legislation. The Foreign Affairs Committee has been very involved in legislation of this kind. The House Banking Committee has been very involved in similar legislation. The House Judiciary Committee has been very involved in title II of the export trading company bill, so much so that some members of the committee have introduced a totally different approach to title II.

As a result, the House made little progress on this legislation last year. They never get it to the floor. Not because of the merits of the legislation, but because of jurisdictional difficulties over on the House side, which we hope they will resolve this year.

Putting this amendment on this bill gives one more committee of jurisdiction a shot at this legislation. It would, at a minimum, invite one more subcommittee and one committee in the House to claim it.

Mr. President, that is just not the kind of help this legislation needs. We want to make the job of the House as easy as possible, not as difficult as possible, which is the effect the amendment of the Senator from Nebraska would have.

I also think, Mr. President, that for us to get into the merits of the issue that the Senator seeks to raise will cause one additional problem, which is to confuse the issue that we will be voting on later today when we finally get to passage of this bill.

If we spend most of our time debating the merits of natural gas decontrol, regardless of how the amendment of the Senator from Nebraska is disposed of, either favorably or unfavorably from his point of view, there are two possible outcomes.

The first outcome is that people who like the result will think that that was what we spent most of our time on and the export trading company bill has somehow become a natural gas bill. Remember, we had a filibuster on this for weeks, with many votes being 48 to 52, 47 to 49. I am concerned that the final vote on this bill might be not what is reflected in the bill but what is reflected in this amendment.

Do we want to make the job of the House easier? Do we want to show people, as a practical matter, that we are all very much for this bill?

Senator PROXMIRE has had more reservations about this bill than anybody else, and we have had our share of disagreements. Nobody has been a stronger or more effective critic of this bill than BILL PROXMIRE. Yet he is a strong supporter of this bill even though he does not think it perfect. This bill passed the Senate last year 77 to 0. I do not want to see it passed 76 to 1. I will be honest with you. I do not want to see it pass 70 to 6. I do not want to see it pass 50 to 40. I want to see it pass by the same overwhelming, unanimous vote that it did last time.

All the amendment of the Senator does, it seems to me, is to cloud the real issues. It does not help this legislation in terms of really giving us a true measure of the support for it that we all know is here in this body.

I understand the Senator is determined to proceed to a recorded vote on this. I understand that Senator BUMPERS wants to make a statement, and I want to move to table the amendment. However, I do not wish to preclude Senator BUMPERS from his statement.

I would like to ask the Senator from Arkansas if he wants some time. I would be happy to yield him some time by unanimous consent.

Mr. EXON. The Senator from Arkansas told me he wants about 3 or 4 minutes. I appreciate very much the offer by the Senator from Pennsylvania to give us some additional time.

Will the Senator yield to me at this time for 3 minutes to answer the objections he has just raised?

Mr. HEINZ. No, this Senator cannot yield that much time, I am afraid. But I am prepared to yield to Senator BUMPERS for a reasonable period of time, if he wants me to yield to him. Otherwise, I will be forced to move to table. I do not wish to foreclose debate, but I do not want to perpetuate the filibuster, either.

Mr. EXON. Mr. President, is the Senator from Pennsylvania indicating that he is not going to give me a chance to respond to his remarks?

Mr. HEINZ. No, the Senator merely declined to yield a half-hour.

Mr. EXON. I beg the Senator's pardon?

Mr. HEINZ. Mr. President, the Senator from Pennsylvania merely declined to yield the Senator one-half hour.

Mr. EXON. Mr. President, I said 3 minutes.

Mr. HEINZ. Oh, I am sorry. I apologize, Mr. President. I understood the Senator to say 30 minutes.

Mr. President, I yield 3 minutes, 4 if he so desires, to the Senator from Nebraska, without my losing my right to the floor.

I apologize to my good friend. I thought he said 30 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. EXON. Mr. President, I thank my friend from Pennsylvania. I was puzzled by his actions. There is a difference between 3 minutes and 30 minutes.

Mr. President, the objections that the Senator from Pennsylvania has to my sense-of-the-Senate resolution in this case are not well founded. I simply point out to the Chair that, on numerous occasions, I have sat on this floor and heard managers of a bill say the same thing that the Senator from Pennsylvania just said with regard to this particular piece of legislation. Mr. President, I simply point out that I wish the Senator would clarify for the Senate the fact that this sense-of-the-Senate resolution would have no effect whatsoever as this bill goes to the House of Representatives.

It is a sense-of-the-Senate resolution and, therefore, would not obstruct the bill at all on the other side of the Hill.

I simply point out to the Senator from Pennsylvania that this sense-of-the-Senate resolution is worded in the same fashion and takes the same form as a Republican-sponsored sense-of-the-Senate resolution 10 days or so ago with regard to sending a message to the President of the United States in the form of a sense-of-the-Senate resolution on another bill that had no direct connection with that, simply saying that it was the sense of the Senate that the grain embargo should be ended. Mine is noth-

ing more and nothing less. If it were appropriate to have that sense-of-the-Senate resolution on the grain embargo, sponsored by those on that side of the aisle in that instance, I suggest, Mr. President, that it is entirely proper for this to be included as I have amended it.

On many occasions, Mr. President, the U.S. Senate has agreed that when we have matters of a critical nature—which I think this is—there is broad interpretation with regard to the amendments to a piece of legislation on the floor.

I yield back to my friend from Pennsylvania, with my thanks.

Mr. HEINZ. Mr. President, how much time does the Senator from Arkansas want?

Mr. BUMPERS. No more than 10 minutes.

I say to the Senator, he is going to be on an airplane with me tonight going to Pittsburgh, and I want us to leave here good friends.

Mr. HEINZ. That may even be possible in 10 minutes.

Mr. President, I ask unanimous consent that I may yield 10 minutes to the Senator from Arkansas without losing my right to the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, first, I want to acknowledge that this amendment may not appear germane to the export trading bill. If this administration had not indicated that it is seriously considering the decontrol of natural gas prices, we could certainly have postponed this amendment until after the recess, to be put on a more appropriate measure. However, there has been much mention in the press about the President's contemplation of decontrol of natural gas prices.

The other day, Secretary of Energy Edwards appeared before the Energy Committee, and this very question came up. I asked him if he had made a recommendation to the President. He said no recommendation had been made, but that it was under study and as soon as they completed the study within the Department of Energy, a recommendation would be made to the President.

I then asked the Secretary what the average price for natural gas in this country is right now. He said he thought it was around $1.50. Actually, it is $1.51 an Mcf—that is a thousand cubic feet of gas.

I then asked Secretary Edwards what the price was for the deep gas in Louisiana, gas found below 15,000 feet.

He did not know, so I told him. I know that the Arkansas-Louisiana Gas Co. is paying between $6.07 and $7 an Mcf.

That means that the controlled price of natural gas is $1.60 per Mcf, but the decontrolled price is $7 per Mcf.

I asked Secretary Edwards if he could give me one reason for believing that all the natural gas in this country would not immediately go to $7 per Mcf if the price was decontrolled. He said that he could not.

Mr. President, decontrol would impose a severe hardship, and I am happy to say that the President cannot decontrol natural gas as he did oil. If he chooses to decontrol natural gas, he must submit it to Congress. I am serving notice here, as I have once before, that the last filibuster on that Natural Gas Policy Act which Senator HEINZ will recall because he and I were among those who slept in the cloakroom for 3 or 4 nights during that one, will be like child's play compared to the one that will take place on this floor if there is any effort to decontrol natural gas any faster than it is being decontrolled right now.

Mr. President, immediately decontrolling natural gas prices would be a grave mistake which would impose further hardships upon Americans without any hope that it will eventually lead to the production of more natural gas.

The current situation demonstrates that fact. Prices are already increasing under the phased decontrol provisions of the Natural Gas Policy Act of 1978.

Mr. President, we are phasing out the price of natural gas right now and I am not very proud of the vote I cast on that right now. I wish I could get it back.

In 1978, the average wellhead price of natural gas was 90.5 cents Mcf. In December 1980, with phased decontrol under the Natural Gas Policy Act, that average had risen to $1.61 per Mcf, an increase of 77 percent. During that same time, however, domestic production barely increased at all, going from an annual production of 19.122 trillion cubic feet in 1978 to 19.295 trillion cubic feet in 1988. That is an increase of 0.9 percent.

Remember that we were told that if we would just decontrol gas, we would find all of it we wanted, but, domestic production has increased only 9/10th of 1 percent since decontrol began. Remember also that the pricing scheme of the NGPA provides every incentive necessary to produce new natural gas and even greater incentives for high-cost gas, or gas which is difficult or risky to produce.

Bear in mind also, Mr. President, that section 102 of the act allowed a price of $1.75 per Mcf for new gas beginning in April, 1977, with inflation adjustments after that, at the rate of inflation plus 3 percent. So prices have been rising by 15 to 17 percent since that time.

Consider the effects of decontrol. The country holds gas reserves of about 200- to 250-billion Mcf. With decontrol, all of that known gas goes up in value by about $5 an Mcf, which means that is a windfall for the oil and gas industry of this country on an order of a trillion dollars.

Section 107 of the act allowed that price for gas from deep wells and also allowed the Federal Energy Regulatory Commission to establish special prices for other high cost gas. So decontrolling natural gas would only provide a windfall for the production of gas which has already been found. It would not encourage production any more than the Natural Gas Policy Act. It would simply increase value of gas already found by hundreds of billions of dollars.

Furthermore, if the oil companies recent acquisitions are any indication, I can tell my colleagues that they will use this money to buy up everything in sight.

I remember during the windfall profit tax debate, the oil companies opposed that tax because, they said, they needed that money to explore for oil and develop synthetic fuel. What have they done? Just in the last few days, they have been repeating the pattern already occurring as a result of oil decontrol. We have become familiar with the news reports, for example, that Standard Oil Co. of California offered to buy Amax, Inc., for $4 billion and that Sohio, which already owns the Old Ben Coal Co., has agreed to purchase the Kennecott Corp. for $1.77 billion. Gulf has also offered to buy Kemmerer Coal and the coal holdings of Republic Steel. The oil companies made one-third of all corporate profits last year.

Seagrams sold its oil interests to buy St. Joe Minerals, although it now appears that it will not succeed. That is $8 billion in the last 60 days offered by the oil companies for nonrelated industries.

Mr. President, it is especially significant that these are purchases, not mergers. The oil companies declared that they needed oil decontrol to get the money to find more oil. Well, they got a lot more money, and, rather than using it to find more oil, they are using it to acquire other companies.

This strategy is especially troublesome in the current economic situation, which requires new investment to enhance productivity. The problem is sufficiently worrisome that we are about to consider a tax bill loaded with provisions designed to encourage new investment. It would be completely inconsistent to decontrol natural gas, take money from those who might make such investments, and give it to companies which will not. That is a breach of faith.

Consider the current economic situation in the world, which, in this administration's view, means we must have more investment capital. So, in a few days or a few weeks or a few months, we will consider a tax bill, the main reason for which is to try to stimulate the economy by inducing people to invest more money. Can we, at the same time, take money by decontrolling gas, the equivalent of the highest tax increase ever imposed on the American people, and give it to the oil industry that takes money from those who might otherwise invest it in another industry, which is supposed to be the whole reason for this administration. It would be inconsistent with this administration's desire to cut taxes.

I can remember when my mother used to complain because our gas bill was $3.50. The other day, I asked a constitutent whether he had received $100 gas bill yet.

He said, that he had not, because he had gotten some $200 and $300 gas bills.

Last January my bill was $156, and that is no big home. Next January, if the price of natural gas is decontrolled, my gas bill will probably be between $400 and $500.

So what we are talking about here is a very serious matter for about 99 percent of the American people.

Finally, Mr. President, consider the ultimate impact on gas price, which would track the Btu equivalent of oil

prices, which, in turn, are dictated by the OPEC cartel. I have spoken of this many times. Thirteen oil ministers from 13 nations sit around the table and decide what the American people are going to pay for oil. When you decontrol gas, they will be deciding what you are going to pay for gas, too.

We have some fine friends in that cartel—Iran and Iraq, for example. You know how they have our best interests at heart when they are setting those prices.

In conclusion, decontrol would be a terrible disaster for the consuming public of America; and those who heat their homes with heating oil are already suffering terribly because of the decontrol of oil prices. Decontrolling natural gas prices would make it even more staggering. Billions and hundreds of billions of dollars will be taken out of the pockets of the American people and transferred into the pockets of the oil companies who made one-third of all the corporate profits made in America last year.

Between now and 1985 we are going to send the OPEC cartel, the equivalent of one-half the value of all the stocks on the New York Stock Exchange. Talk about a transfer of wealth from people who cannot afford it—all in the name of some misguided idea about the free marketplace. The free marketplace is fine, but we should not use it as a knee-jerk, litmus test when there is no free market and there is not going to be a free market because of the operation of the OPEC cartel.

A recent study by Energy Action estimated that immediate decontrol would add $626 billion to natural gas prices. More American households depend on natural gas for heating than on any other fuel. In the regions of the country where natural gas use is most intensive, the gas bill for the average household would increase by between $6,000–$7,000 between 1981 and 1985. Energy Action estimated that the greatest increases would occur in the West North Central and East North Central regions of the country, with respective increases of $6,750 and $7,788. This problem will be compounded by the increases in the price of finished products which require natural gas for processing. An example is the manufacture of automobiles, an industry heavily centered in the gas-dependent regions. The inevitable price increases would further depress that industry, thus negating the Federal aid which that industry has already received.

Finally, we must consider natural gas pricing in the international context, because decontrol would free natural gas prices to move up to the Btu-equivalent of the world price of oil. Therefore, decontrol would be a Government action removing protections of the domestic market and allowing that market to be manipulated by an acknowledged cartel. By comparison, before the end of this year, we will probably consider legislation to restrict car imports, even though evidence of unfair trade practices by foreign car manufacturers is less than compelling, and by no stretch of imagination it is as clear as OPEC's inflationary price manipulations. It would be absurd to remove one protection against an acknowledged cartel and to consider adding an import restriction on cars which might have slight justification and which would probably have an inflationary impact by removing cheaper cars from the market.

In short, there is no justification for decontrolling natural gas. It would severely damage the economy, and I urge my colleagues to support the amendment expressing the sense of the Senate that the pricing schedule of the Natural Gas Policy Act not be changed.

I thank the Senator for yielding me time.

Mr. HEINZ. Mr. President, I yield 4 minutes to the Senator from Idaho, without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. I thank the Senator for yielding.

Mr. President, I appreciate the opportunity to give some reassurances to some people who obviously are rather nervous about something, the exact substance of which I am not certain.

I have said repeatedly, and I will say now on the record—I have said it on the record before, and I will repeat it here today—that, so far as the chairman of the Energy and Natural Resources Committee is concerned, we have no expectation to deal with any question concerning the decontrol of natural gas this year. That is a matter of record.

To go beyond that slightly, this is not the time to debate the merits of energy policy on a bill that is totally unrelated to it, and I do not intend to take the time today to talk about energy policy in particular.

However, I do want to indicate that, from the examination of the budget materials that have been submitted to us both by the former administration and as updated by this administration, and as late as the hearings we are in the midst of now, both in the Energy and Natural Resources Committee and the subcommittees of the Appropriations Committee, the budget data reveal to us—and the plans of this administration are—that the Federal Energy Regulatory Commission will continue in its activity administering the provisions of the present legislation that governs the pricing of natural gas in this country.

So, it seems to me that to debate here today a sense-of-the-Senate resolution dealing with a very important part of the energy policy—but only a part of it—is both misplaced and premature.

I understand that the Senator from Pennsylvania, the manager of the bill, will make a motion, at the appropriate time, to table the pending amendment. I will support that motion to table, because I believe that this is not the time to settle the issue of the merits of the question of control or decontrol of natural gas.

There is a study commission which has indicated what the economic consequences will be of changing the pricing regime under which natural gas prices are now controlled; but I think it is clear that that does not mean that immediately on the heels of it they will come forward with a proposal for the immediate decontrol of natural gas.

So far as this Senator can make any assurance to the Members of the Senate on both sides of the aisle, that will not be done through my committee this year. There are no plans to do it. The administration has not asked us to do it.

From what I can discern from the plans of the administration, as revealed by the budgetary submissions with regard to the activities of the various subagencies of the Government that deal with this problem, they intend to be administering the law as it is now written with respect to the pricing of natural gas.

I have indicated that we may look at the Fuel Use Act to determine whether or not we should make any change in the mandatory conversions or allocations of various fuels, including natural gas; but that is totally separate from the issue of whether or not we are going to deal with the decision that Congress made last year to put natural gas on a path toward decontrol of natural gas.

So I hope that when we get to the point of voting on the motion of the Senator from Pennsylvania, we will vote not upon the merits of the issue of control or decontrol of natural gas but will vote upon the motion to table, with the expectation that the issue will be before us later. I hope the motion will be agreed to, so that we can enter that debate at the appropriate time and at the appropriate place.

Mr. HEINZ. Mr. President, I want to make it clear that a vote to table this amendment is not necessarily a vote against the merits of the amendment offered by Senator EXON. I am certain that some people who will vote for tabling would vote for the Exon amendment on its merits, were it offered at the appropriate time and place. Frankly, I feel that way about it.

So, Mr. President, I move to table the Exon amendment.

The PRESIDING OFFICER. The question is on the motion to table the amendment of the Senator from Nebraska.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, I ask unanimous consent to yield to the Senator from Ohio for not to exceed 5 minutes without losing my right to the floor.

The PRESIDING OFFICER. Is there objection to debate being in order notwithstanding the pendency of a motion to table?

Without objection, it is so ordered.

The Senator from Ohio is recognized for 5 minutes.

Mr. METZENBAUM. Mr. President, I came over to support the amendment of the Senator from Nebraska because there cannot be any logical reason to be de-

controlling the price of natural gas in these economic times.

It takes us back to the period when the previous administration proposed to phase decontrol of the price of natural gas. They told us at that time that we had to have phased decontrol because there was a shortage of natural gas in this country and that they had to go out and drill for more gas.

It was hardly 24 hours after the phased decontrol became a reality that the oil companies and the natural gas companies, which are really one and the same, took the caps off their wells and suddenly there was a glut of natural gas in this country. They called it a bubble.

What they did was hold back their product from the marketplace to force up prices. They were successful in doing just that. Then they had to say there was a glut and it was embarrassing to them. But the price continued to go up, and there was plenty of natural gas.

Now we find that the natural gas companies are constantly hammering away at the idea that everyone should convert to natural gas.

But despite all of the price increases, nothing has really happened. The oil and gas companies have not found that much more natural gas. But they have raised the price, and they have taken the caps off the fields where the gas was all the time.

There were 15 separate Government reports indicating that there was an adequately supply of natural gas at the time the Congress considered phased decontrol but that the gas companies were holding it back.

Now we are talking about the possibility of decontrolling natural gas prices entirely. One report says that immediate decontrol will cost the American people $600 billion. Another report indicates that the price of natural gas will double, and I do not doubt any of those assertions. As a matter of fact, a spokesman for Sohio, Standard Oil Company of Ohio, was making a speech in Cleveland the other day, and he stated:

> Mossler predicted, "Today a $100 monthly bill for natural gas will be $1,000 in 1990 if nothing changes."
>
> It goes on to say,
>
> And we have to prevent that.

Mossler said that the Government must encourage the maximum domestic production and the consumer must conserve that. Yet, every time the consumer conserves heat, the gas companies have increased their prices that much more claiming they needed it in order to achieve a fair return on their investment.

Decontrolling the price of natural gas would be similar to decontrolling the price of oil.

All that decontrol resulted in was higher prices for the oil companies and the American consumer wound up paying the price.

When we originally had the issue about decontrolling the price of natural gas and phasing it in, as the Carter administration did, they told us that we should not be using natural gas for industrial boilers and that we should not use oil for industrial boilers, that we should use coal, which is in very abundant supply, and much of which comes from my own State. But immediately after we passed the matter of phasing out controls, what happened? Suddenly, Mr. Schlesinger and his team reversed signals said, "Now, we should use more gas for industrial boilers, and that is the way of backing out of oil."

The American people have consistently been misled. The American people have been consistently taken advantage of, and the American people cannot afford to have the price of natural gas decontrolled.

This economy cannot tolerate the decontrol of oil. But if oil decontrol is compounded by the decontrol of natural gas that would indeed be an unbearable burden.

When some of us argued that President Reagan's decision to accelerate the decontrol of the price of oil would raise the inflation rate 1.2 to 1.4 percent, it was pooh-poohed.

But the most recent figures that came out indicate that we were right on target and if anything maybe we were a bit low.

I feel very strongly that the amendment of the Senator from Nebraska, the attachment he would make to this bill, is in the right order.

I think a message should be sent to the administration. As this Senator has said on previous occasions in the Chamber, if there should be an effort to decontrol the price of natural gas, I know that many other Senators would join me in causing a debate on that subject to extend through the days and nights of the Senate.

The Senate cannot tolerate that. I believe we should get on about our business, and I hope that the administration does not see fit to send any action up to this Congress that would effectively decontrol the price of natural gas.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I ask unanimous consent, without losing my right to the floor, to yield 5 minutes to the Senator from Texas.

The PRESIDING OFFICER. Is there objection to the Senator from Texas proceeding for 5 minutes during the pendency of a motion to table?

Without objection, it is so ordered.

Mr. EXON. A parliamentary inquiry.

Mr. BENTSEN. Mr. President, I wish the Chair would not wait so long for that objection, that we move a little earlier on that, if I may.

The PRESIDING OFFICER. Does the Senator from Texas yield for an inquiry?

Mr. BENTSEN. I yield without losing my right to the floor.

The PRESIDING OFFICER. The Senator has that right.

Mr. EXON. Mr. President, the motion to table has been made by the Senator from Pennsylvania. Is that correct?

Mr. HEINZ. It has been withheld.

The PRESIDING OFFICER. The motion to table has been made.

Mr. EXON. Mr. President, I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. EXON. I thank my friend from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, I rise to oppose the amendment of my good friend from Nebraska.

As he probably knows, and I am sure the Senator from Ohio knows, this is one of the most emotional and controversial issues that we can have before the Senate.

I can well recall the debate in 1977 when we went weeks on end debating this issue. I can remember going on through the night as we discussed it. I can recall Senators being awakened and brought here to vote, coming into the Chamber at 3 a.m. to vote on this issue.

That is the kind of a tough, controversial issue this is.

My friend from Ohio says that despite the N.G.P.A. they have not found that much new gas. But I understand that we have had an unprecedented amount of production from below 15,000 feet. We are not having the brownouts we had before and there has even been a net increase in the amount of new gas reserves in this country. We have not been able to accomplish that in oil.

What we have accomplished is to buy some time while we try to make the transition to alternative sources of energy. But it is controversial in every respect. I do not know of any issue that is tougher to iron out on the floor of the Senate.

Are we going to say, without any benefit of hearings on how we might improve the act, make it work any better, that we are going to vote on it now and say it is perfect?

Is there no little change we could make in that piece of legislation? With the time and the experience we have had in seeing which parts of it worked and which were inequitable can we not determine how the act can be improved? We still have time to improve it for the consumer, for the producer, and for industry.

But how do we do that? We do it with hearings, where we let all segments of our society be heard. There can be some improvement. I would assume, for all of these people.

I do not believe we should short-circuit that process.

I do not believe we should close the door on that possibility before we even have the chance to explore it. We should be more deliberative about evaluating our Nation's energy policies.

I am unaware of any decisions that have been made to completely decontrol the price of natural gas, as the distinguished sponsor of the amendment would have us believe. There may be some improvements we can make, and I certainly hope that all concerned will be able to set aside some of the emotion

of this issue so that we can look at improving our Nation's energy supplies, particularly in gas.

Finally, we have to ask ourselves, is this amendment germane to the export trading bill which it hopes to amend? Clearly it is not germane. It is rather an attempt to push through the Senate an early end to the debate on natural gas before it even begins.

So I hope my colleagues will be more deliberative on this emotional issue and reject this amendment of my good friend from Nebraska.

I thank the distinguished Senator.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

Mr. HEINZ. Mr. President, I ask unanimous consent that the Senator from Washington (Mr. JACKSON) be recognized for not to exceed 5 minutes during the pendency of the motion to table.

The PRESIDING OFFICER. Is there objection to the Senator from Washington proceeding for 5 minutes notwithstanding the pendency of a motion to table? No objection being heard, the Senator from Washington is recognized for 5 minutes.

Mr. JACKSON. Mr. President, I thank the senior Senator from Pennsylvania.

I just learned of this amendment a few minutes ago. I believe the timing of the amendment and the procedure here are not wise. As the major author of the amendments to the original Natural Gas Act of 1937, I must speak my mind.

Mr. President, may I say that I agree wholeheartedly with the substance of the pending amendment. I want to report, as we all know I am sure, that the Natural Gas Policy Act is indeed working. There are more rigs out drilling for gas now than at any time in history. We had a net increase in domestic natural gas production last year for the first time, Mr. President, in years.

However, I must disagree with pursuing this amendment at this time, and I emphasize "at this time." The chairman of the Energy Committee, Mr. MCCLURE, has urged the administration not to pursue legislation for decontrol at this time. So, may I point out, Mr. President, Has the chairman of the House Energy and Commerce Committee, Mr. DINGELL? And, if I may add, I also share the view of the chairmen of the Senate and House committees.

I think we are all in agreement that the act is working reasonably well. It may not be perfect, but it is indeed achieving the purpose for which the legislation was intended. It is my view, Mr. President, that tampering with it will create uncertainty, and that is the last thing we need.

Now is not the proper time, nor is this the proper vehicle, to pursue this issue.

If the administration chooses not to heed our collective advice and sends us a bill I want to say right here and now that I will oppose it. I do not mean just ordinary opposition, because I feel very deeply about this subject. I believe that our collective efforts reached an equitable result. We were able to achieve a bipartisan compromise. Our differences of opinion were fought out and resolved.

I think the administration certainly should get the very clear message that amending the Natural Gas Policy Act would not be an easy task. We want to make that very clear.

I would join the ranks of those who would talk a long time, or at length, or any other way you want to describe any sort of extended debate, regarding any decontrol bill.

Finally, Mr. President, this resolution does not provide the proper forum, or afford us time for adequate preparation to discuss the hundreds of issues we would need to discuss in connection with such an important debate.

I will, therefore, support the tabling motion. I want to make it clear why I am supporting it. I must state categorically that I do not oppose the substance of the amendment, but I indeed oppose the procedure here which I do not think gives the consumers, the producers, and the public interest as a whole an opportunity to be heard, to properly ventilate all of the matters that are relevant and pertinent to this matter.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. The yeas and nays have been ordered——

Mr. HEINZ. Mr. President, I ask unanimous consent that during the pendency of the motion to table I may yield first 2 minutes to the Senator from Massachusetts (Mr. TSONGAS).

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The Senator from Massachusetts is recognized for 2 minutes.

Mr. TSONGAS. Mr. President, this amendment presents a dilemma for those of us who are from the Northeast and whose States are reasonably dependent upon natural gas.

But I share the view of the Senator from Washington, that it is premature to bring the issue up like this without serious debate and consideration. I think it does not do justice to the complexity of the issue.

I happen to support decontrol in principle for the obvious reason that energy ought to be priced at its replacement cost in order to assure efficient use and sufficient development of energy. But the specific question of natural gas decontrol depends on a great deal of information not yet available regarding the competitiveness of natural gas markets, projected supply response, availability of substitutes, adequacy of programs to protect the poor, and interregional transfers of wealth. I think that faced with an attempt by the President to deregulate natural gas suddenly, I would join with the Senator from Washington in the extended debate and oppose efforts to eliminate the Natural Gas Policy Act. But I think the issue today is the export trading companies.

The likelihood is that the President will not seek to deregulate natural gas this year. The chairman of the Energy Committee has said he does not think that will take place either. I think on the merits I agree with the Senator from Nebraska but given the issue of time and place rather than substance, I will vote to table and urge my colleagues to do the same. However, I reserve my right to join with the Senator from Nebraska in the future were there to be an attempt to deregulate. But I want to distinguish between the substance of the issue and what indeed we are addressing here today.

I thank the Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I ask unanimous consent that the Senator from Nebraska (Mr. EXON) be yielded 2 minutes without my losing my right to the floor during the pendency of the motion to table.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair, and I thank my friend from Pennsylvania. I also wish to thank the wide range of support I am receiving from my colleagues on the floor for what I am trying to do, but not now.

It brings to mind the old story that I am all for the church but I am not going to give to it because I do not like the location. The fact of the matter is I do not want the new church in the first place.

I am amazed to hear on the floor some of the people who conceded they put together the Natural Gas Policy Act of 1978 saying we should not tamper with it.

Mr. President, this sense-of-the-Senate resolution does not tamper with it at all. It says it was a good act and it says we should continue that. That is all it says.

Let me read it again:

> It is the sense of the Senate that the schedule of the phased decontrol of natural gas prices embodied in the Natural Gas Policy Act of 1978 continues to be sound public policy which should not be altered.

I am patting them on the back for the good job they did, and they objected for reasons—unless they are indeed intending to change that well-thought-out measure that they enacted in 1978.

I urge my colleagues to vote against the tabling motion.

I thank my friend from Pennsylvania.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Pennsylvania to lay on the table Mr. EXON's amendment (UP No. 53).

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER), the Senator from Florida (Mrs. HAWKINS), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Illinois (Mr. DIXON), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. BRADLEY) is absent on official business.

The PRESIDING OFFICER (Mr. ABDNOR). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 66, nays 27, as follows:

[Rollcall Vote No. 80 Leg.]

YEAS—66

Abdnor	Goldwater	Melcher
Andrews	Gorton	Mitchell
Armstrong	Grassley	Murkowski
Baker	Hatch	Nickles
Bentsen	Hatfield	Nunn
Boren	Hayakawa	Percy
Boschwitz	Heflin	Pressler
Burdick	Heinz	Quayle
Byrd, Harry F., Jr.	Helms	Rudman
	Humphrey	Schmitt
Cannon	Jackson	Simpson
Cochran	Jepsen	Specter
Cohen	Johnston	Stafford
D'Amato	Kassebaum	Stennis
Danforth	Kasten	Stevens
DeConcini	Laxalt	Symms
Denton	Leahy	Thurmond
Dole	Long	Tower
Domenici	Lugar	Tsongas
East	Mathias	Wallop
Ford	Mattingly	Warner
Garn	McClure	Weicker
Glenn		

NAYS—27

Baucus	Exon	Pell
Biden	Hart	Proxmire
Bumpers	Hollings	Pryor
Byrd, Robert C.	Inouye	Randolph
Chafee	Kennedy	Riegle
Chiles	Levin	Roth
Cranston	Matsunaga	Sarbanes
Dodd	Metzenbaum	Sasser
Eagleton	Moynihan	Zorinsky

NOT VOTING—7

Bradley	Hawkins	Williams
Dixon	Huddleston	
Durenberger	Packwood	

So the motion to lay on the table UP amendment No. 59 was agreed to.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. McCLURE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, will the distinguished manager of the bill yield to me so that we may take care of another matter?

Mr. HEINZ. I yield.

SENATE CONCURRENT RESOLUTION 17—PROVIDING FOR ADJOURNMENT OF THE CONGRESS FROM APRIL 10, 1981, TO APRIL 27, 1981

Mr. BAKER. Mr. President, I send to the desk a concurrent resolution and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 17) providing for an adjournment of the Congress from April 10, 1981 to April 27, 1981.

Mr. BAKER. Mr. President, I have conferred with the distinguished minority leader. I believe he is agreeable to disposing of this matter at this time, and I hope that the Senate can dispose of this resolution so we can send it to the other body at this time.

The concurrent resolution (S. Con. Res. 17) was considered and agreed to as follows:

Resolved by the Senate (the House of Representatives concurring), That when the two Houses adjourn on Friday, April 10, 1981, they stand adjourned until 12 o'clock noon on Monday, April 27, 1981.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

GRAYMAIL LEGISLATION: PROTECTING NATIONAL SECURITY IN CRIMINAL CASES

Mr. BIDEN. Mr. President, I was pleased to note last week in reading the Baltimore Sun that the Justice Department is implementing the so-called graymail legislation for the first time in a case in Baltimore. That case involves a former CIA agent charged with embezzling $60,000. The former agent's defense is that the CIA authorized the loans for secret CIA projects. Of course the defendant intends to use that defense as a pretext for pretrial discovery that will force the Government to disclose classified information and "graymail" the Government into dismissing the case. The Classified Information Procedures Act which we developed in the Judiciary Committee last year addresses this problem by providing procedures to protect classified information and restrict frivolous discovery motions in these kinds of cases.

I ask unanimous consent that an article from the April 2 Baltimore Sun describing this case be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NEW LAW ON CLASSIFIED DATA MAKES DEBUT IN JOLLIFF CASE

A federal judge yesterday appointed a caretaker for secret documents that may be sought by a former CIA employe as evidence in his criminal case, activating for the first time here a new law to guard against public disclosure of classified information.

The temporary appointment was made by U.S. District Court Judge Frank A. Kaufman in the case of Wade A. Jolliff, Jr., who is charged with impersonating a CIA agent and fraudulently obtaining more than $55,000 in loans for purported CIA "operations" while working as head of security at the University of Maryland's Baltimore campus.

Mr. Jolliff, who the FBI said worked for the CIA until 1972, disputes the charges, contending that there are CIA records that will prove he was actually on assignment for the agency while employed at the university's Baltimore campus.

However, concerned that Mr. Jolliff—who had access to secret information while working for the CIA—may be seeking classified information, federal prorsecutors have asked that procedures outlined in the Classified Information Procedures Act be followed.

The law, enacted last October, would require Mr. Jolliff to disclose in writing what material he is seeking and to prove the relevance to his case of any secret material he may request. The law also requires the appointment of a court security officer to protect any classified documents.

Judge Kaufman temporarily assigned Mary Schwartz, a member of the Security Programs staff of the U.S. attorney's office, to that duty so the case could proceed in time for the April 21 trial. A permanent caretaker will be appointed some time next week from a list of candidates provided by the Justice Department, a Justice Department spokesman said.

The duties of the security officer include making certain that the area where the documents will be reviewed—for example, the judge's chambers—is secure and that no one who does not have CIA clearance sees the information.

According to FBI records, Mr. Jolliff worked 10 years for the CIA until he left in 1972 to work for UM as head of security at the Baltimore campus.

In the grand jury indictment, Mr. Jolliff was accused of obtaining loans from B. Dixon Evander Associates, Inc., an insurance firm, and from other investors in an alleged scheme in which he purported to solicit funds for secret CIA projects.

HEROIN ADDICTION AND STREET CRIME

Mr. BIDEN. Mr. President, as ranking minority member of the Senate Judiciary Committee I am continuing to pursue an issue I began addressing 2 years ago as chairman of the Subcommittee on Criminal Justice. Two years ago the subcommittee began to notice an increase in Southwest Asian heroin in the urban Northeast. I am convinced that heroin addiction is a prime contributor to much of the increasing crime that occurs in this country.

This opinion is supported by most streetwise cops and prosecutors, but now we have supportive research which shows the appalling relationship between heroin addiction and street crime.

A study done by Prof. James Inciardi of the University of Delaware showed that 356 active heroin users were:

First, responsible for 118,134 crimes in 1 year;

Second, over 95 percent reported committing illegal activity in the year period;

Third, 90 percent relied on criminal activity as a means of income; and,

Fourth, most disturbing, is that only 1 of every 413 crimes committed resulted in an arrest.

Additional research completed this past year at the Temple University School of Medicine by Dr. John C. Ball, Dr. Lawrence Rosen, Dr. John A. Flueck, and Dr. David Nurco showed that 243 heroin addicts committed almost 500,000 street crimes in 11 years.

Their research also showed that when these addicts were not dependent on heroin, there was an 84-percent decrease in criminality.

These two studies clearly show that if we could ever control heroin addiction or even reduce it, we would see an appreciable reduction in criminality.

As the new administration begins its war on violent crime it also proposes to cut $5.4 million requested previously by the Drug Enforcement Administration for its Southwest Asian heroin interdiction program, elimination of the State and local drug coordination program, $5.9 million cut for the Federal, State, and local task force programs, and budget cuts to the State Department's international narcotic management program that supports crop substitution overseas. In the treatment area, there will be major cuts in treatment slots and prompted Mr. Julio Martinez of the New York State Division of Substance Abuse Services to say in the New York Times on March 9, 1981:

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES ACT

The Senate continued with consideration of the bill.

UP AMENDMENT NO. 60

(Purpose: To strike section 108)

Mr. ARMSTRONG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Colorado (Mr. ARMSTRONG) for himself and Mr. PROXMIRE, proposes an unprinted amendment numbered 60.

"Beginning with page 22, line 11, strike out all though page 24, line 15."

Mr. ARMSTRONG. Mr. President, the amendment which I have sent to the desk on behalf of Mr. PROXMIRE and myself addresses itself to an amendment which was adopted by the Banking Committee during the consideration of this bill. I should like to take just 1 minute to explain the amendment. Before I do so, I ask unanimous consent that the Senator from New York (Mr. D'AMATO), and Senators GARN, LUGAR, and TOWER, be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ARMSTRONG. Also, Mr. President, while I am on my feet, let me congratulate the managers of the bill for this important and worthy effort to expand the export trade of this country. It is a good bill. It is a bill of which I am a cosponsor, and one which I certainly intend to support.

Mr. President, during the course of committee consideration, the Committee on Banking inadvertently, in my judgment, added a section to the bill which is most unfortunate, an amendment to allow the Secretary of Commerce to grant up to $40,000 to small business manufacturing firms to help them defray the cost of hiring an export manager. I oppose this part of the bill, not because I am against export managers—I am sure such managers can be helpful to companies who are breaking into the export business—but because I can see no rational justification, particularly at a time of budget restraint, for the Federal Government to be in the business of picking up the cost of such export managers. In my opinion, that is a proper business function, not a proper function of Government.

Mr. President, with that brief word of explanation, I inquire if it would be the disposition of the managers of the bill to accept this amendment so we can avoid a recorded vote on it and save the time of the Senate.

Mr. RIEGLE. Will the Senator yield?

Mr. ARMSTRONG. Yes, I am happy to yield.

Mr. RIEGLE. Mr. President, I might say that others and I supported this item in the committee. I should want to oppose the Senator's amendment and therefore want a debate and propose we vote on it eventually.

Mr. ARMSTRONG. Mr. President, I am happy then to have the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ARMSTRONG. Mr. President, I believe I have made enough explanation of the essence of the amendment but I shall yield the floor at this time to see what other Members have to say. If questions or objections are raised, I shall be happy to respond.

Mr. RIEGLE. Mr. President, may I inquire in terms of the time in opposition to the amendment, would that be controlled by my colleague from Wisconsin?

The PRESIDING OFFICER. There is no control of time.

Mr. HEINZ. Mr. President, let me state for the benefit of my colleague, there is no time agreement on this bill. So the Senator may be recognized to have as much time as he can conceivably consume.

Mr. RIEGLE. I thank the Senator from Pennsylvania. I shall try to be brief, although I do think this is an important issue.

Mr. President, I might say that the part of the bill which the Senator from Colorado is attempting to strike out is a part that was supported within the committee and has been debated at some length. I think it is a very important section of the bill.

Actually, section 108, which is targeted here by the amendment, is a strong small business program. It is aimed at small business in ways that I shall shortly describe. I might say that this part of the bill was also included in last year's bill, so this has been around for a period of time. It was acceptable last year, was part of the bill last year, and is again today on the floor.

The program that is marked out in this section would make possible the employment of export managers by small business manufacturing firms which have not previously been exporters in substantial amounts. Firms which are new to exporting and do not already have an exporting manager would be eligible to compete for grants of 50 percent of the export manager's salary and expenses or a maximum amount of $40,000, whichever is less. Section 108 establishes a pilot program to test a promising new approach to export expansion and then evaluates its effectiveness in generating increased export sales.

It would help defray the costs of hiring an export manager by making 1-year grants—that is all they are, 1-year grants—to enable the company paying half the price of the export manager to get into this business. If it pans out, as we think it will in most cases after the first year, they are on their own and will have to pick up the full expense on their own. It is a very modest initiative.

The program as a whole would be funded at a level of only $2 million a year for 3 years. That would be enough to provide somewhere between 150 and 300 of these grants to small businesses with high export potential to be able actually to break into this business and make a serious effort at developing foreign markets abroad for U.S.-built products.

Mr. President, the Commerce Department forecasts that the U.S. balance-of-trade deficit will reach a record level of $33 billion in 1981. In my view, we are simply not adjusting to the new situation of world interdependence brought about in part by increased petroleum prices but also, in part, by the greater competitiveness of our trading partners.

Mr. President, I think we have to face up to the fact that there is a need to expand our exports and be aggressive about it if we are going to be able to pay for our exports and prevent further deterioration of the dollar and the effect that that would have on inflation in the United States. It would have the effect of increasing inflation in the United States.

I think a key opportunity for expanding our exports lies in the 18,000 small- and medium-sized businesses which could be selling their products abroad today, but are not. The Department of Commerce estimates that as many as 10,000 of these 18,000 firms have an interest in exporting but are unable to overcome the initial barriers to getting started: Lack of information about foreign markets and lack of expertise to handle the technical problems of selling, financing, and shipping products abroad and the unfamiliar business practices of foreign customers. In addition, there are foreign exchange uses and things of that sort.

An obvious way for a firm to solve these problems is to put an experienced export manager on the payroll. But most smaller firms cannot afford to take the frontend risk of the full cost of an export manager's salary, fringe benefits, and expenses. The export manager grant program will help such firms make a commitment to exporting by offering a 50-percent subsidy not to exceed $40,000 for the first-year costs of adding such a person to the firm.

Any small company that would want to compete for these grants would be in competition with any other company across the United States, with the Department of Commerce to select the most promising companies that have come forward for this particular incentive grant who really want to make a serious effort to crack into the export market.

There is a magazine named "INC," which has a circulation of 400,000 in the United States, mainly to small business executives. It has a lead article in the March issue which favors the expanded export trade approach that I am discussing. With regard to this bill, S. 734, the article states as follows:

Congress is considering amendments to the Webb-Pomerene Act and to banking laws that will permit American firms to organize full service trading companies similar to those that have helped Japan achieve its remarkable export success. The bill would help place large and small American firms on an equal footing with other countries' exporters. Of particular concern to Congress has been the estimated 20,000 small businesses that could be exporting but are not; included in the proposal are provisions for

grants to cover initial salary costs for export managers in qualified small businesses.

So I say that section 108 should remain in this bill. It will help small business in this country. It has strong small business support. It will help create new jobs and new opportunities in terms of penetrating what is an expanding world market.

It is an absolutely modest amount of money, and one with high leverage potential in terms of opening up export markets, reducing our balance-of-payments deficit, and creating jobs in the United States.

It is designed in such a way because it is a cost-sharing grant and a 1-year grant. Beyond that point, if a firm wants to continue, it is on its own. I hope we can take this step.

I conclude in this way: I believe we have to face the fact that major exporting nations such as Japan are today assisting business in their country in every conceivable fashion. They are doing it with financial capital incentives. They are doing it with help with respect to Government regulation. They are doing it by coordinating their foreign policy initiatives to try to open the way for their domestic companies to compete aggressively abroad. Certainly, we see the effects of that in the United States, but they can be seen around the world.

In the United States, we have done very little to help business, large or small, in terms of this new world market environment, to be able to compete more effectively. We have lived with an old notion that we do not have to pay that much attention to developing world markets for our products. That has to change. We have 18,000 to 20,000 small businesses in the United States that have a very good potential for becoming export companies, but they have not yet done so. We must save a way to encourage them to get into this act in a serious fashion and to sell these goods aggressively abroad, because it will benefit the United States.

I have confidence that because the amounts are small and because the cost sharing is only for the first year and it is 50–50, this is exactly the kind of balanced initiative that even the new administration has in mind, in terms of stimulating the private sector, creating private jobs, and opening up areas of economic potential. In the past, we have not done enough of that.

I hope the Senate will accept the measure as it is written. It has been crafted carefully. I know that the Senator from Colorado objects to it because it is a new initiative, but I do not think we should always object to something because it is a new initiative. From time to time, we have modest, well-balanced, well-constructed, relatively inexpensive initiatives, with a very high potential payoff in the private sector, with jobs, with reduction of our balance-of-payments deficit, and this is exactly the kind of initiative we should be taking. Otherwise, we will see ourselves sliding backward in world market competition, and I do not believe that is something we can afford.

Mr. PROXMIRE. Mr. President, I am pleased to cosponsor this amendment by the distinguished Senator from Colorado. I support his position on it.

The Senate should strike section 108 from the bill. Section 108 authorizes $2 million of Federal money each year for 3 years for grants to subsidize salaries of export managers, up to $40,000 a year.

That means that if the firm pays him $40,000, the Federal Government will match it with another $40,000, for an $80,000 payment. It seems to me that such expenditures from the Federal trough would be nothing short of outrageous. All Americans today are being asked to sacrifice by budget cuts. I support deep budget cuts, as do others, because we need to reduce inflation. Less Government expenditures is a quintessential way to stop inflation.

Now comes section 108. Under what possible theory can we justify paying export managers employed in private enterprise a Federal subsidized salary of $40,000? This, of course, would be on top of the salary they receive. What a precedent. Where do we stop?

Should the Federal Government pay a subsidy to college professors at Harvard or Yale or the University of Michigan or the University of Wisconsin or Slippery Rock—a $40,000 subsidized salary? After all, college professors serve the public interest at least as nobly as export managers.

How about a Federal subsidy to pay a $40,000 salary of Red Cross administrators or Salvation Army generals or dairy farmers or coal miners or foundry workers?

There is no end to worthy occupations in this country, people who do very constructive work in our economy. I am sure business would love it if they were paid an additional $20,000, $30,000, or $40,000 by the Federal Government.

I submit that if you walked down the street of any town in my State and asked the first small, independent businessman you met whether he would support a $40,000 subsidy from the Federal Government to pay anybody's salary in the private sector, he would say, overwhelmingly, "No."

How this can be tagged as a small business amendment is beyond me. I am sure that the overwhelming proportion of small businessmen want less Government, not more; less Government subsidies, not more.

At a time when he have passed a second concurrent resolution in matching the President's cuts, for us to come along now with a new program to provide subsidies of up to $40,000 to pad the salaries of people in the private sector is absolutely wrong.

I hope the amendment of the distinguished Senator from Colorado is supported.

Mr. RIEGLE. Mr. President, may I be recognized in response to that?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I want to respond to the comments of my colleague and friend from Wisconsin, because I think that, in his criticism, he misstates what we have in mind here. Let me make it very clear.

We are talking about a maximum of $40,000. It might be $30,000; it might be $25,000; it might be $20,000.

Mr. PROXMIRE. That is precisely what I said. It could be $30,000, $40,000, $10,000, whatever. It has to be matched.

Mr. RIEGLE. I am glad to have that clarification, because it would not be $40,000 in all instances. That is a ceiling figure. In perhaps a handful of cases, it might go as high as that, but that is a maximum figure, and that is not a set figure. That is not a figure that would necessarily apply in all cases. It might be half of that in some cases.

I want to go on and make a couple of other points.

The Senator from Wisconsin indicated that this would be for the salary. I want to make clear that it is not just for the salary. The task of employing an export manager does not involve only paying the salary in the normal compensation package of a skilled employee in a firm of this kind. An export manager normally has to travel, has to go to foreign countries, depending upon the scope of the foreign market situation that a particular export manager might be trying to develop or explore. The cost of international travel expenses associated with that—long distance phone calls overseas, things of this kind—I am contemplating that expenses of this kind, associated with carrying out an active export manager's role over the course of a year, could conceivably be a figure as high as $30,000.

Mr. PROXMIRE. Mr. President, if the Senator will yield, it seems to me that makes it much worse. We not only subsidize salaries but you have all kinds of expenses. Consider. After all, these export trading companies will often be in competition with each other. We are going to subsidize a small number because it is only $2 million, up to $40,000. Whom do we subsidize and whom do we not?

Talk about unfair competition—in one case the Federal Government is stepping in with a subsidy of $40,000, maybe $20,000 or $30,000, and in the other case it will not be subsidizing at all.

Why not solve the problem by not providing money, not spending the Federal money?

Mr. RIEGLE. Mr. President, I will not yield further.

I will answer by saying that does not solve the problem. The Senator is not offering an answer for the problem. I might say very directly we have a situation here where we are not doing well in terms of our trading relationships abroad. Our balance of payments is increasing. It is adding to inflation. It is undercutting the value of the dollar. We have to do something about it. We have to become more aggressive in terms of trading in this new world economy, and we have to help the small companies get into this act and not just the big giants.

What we have here is a very small program. We are talking about $2 million a year. Small firms can compete for

it, a maximum of $40,000 for 1 year on a pilot basis, to hire a competent export manager to get in to this act to see if we cannot start selling more American products abroad.

Why can we not do something once in a while to help the private sector here in the United States and create jobs?.

My goodness, I thought that was supposed to be part of the theme of the new administration, and if it is, it is one I support.

We have 20,000 firms in the United States that have been identified as high-potential firms, small companies that could be out selling our products abroad and providing jobs and capital here in the United States, and we need to move on that problem, and it is competitive.

Any small company that feels it has this kind of potential and is willing to make half the investment for the first year could come in and submit an application of that sort, lay out their plan, and the Department of Commerce would make an evaluation and would select the ones that have the highest potential, and it is a 1-year situation and at the end of that year if it is valuable, then the companies themselves have to carry it forward without a dime from the U.S. Government.

But the fact of the matter is we will get this money back and we will get it back with big dividends.

Let us not be blind to what is happening to us in this world economic situation. We have small companies all across the United States that have potential to grow into big companies if they can get into these foreign markets.

There are an awful lot of people who live around the world who should be buying more American goods. This is an intelligent, modest, rational, very, very carefully targeted way to try to wedge ourselves into that picture.

We can just sit here in a fortress America and think we have all the economic strength that we need and ignore the fact that we are spending $100 billion a year for foreign oil, spending $10 billion a year this year in the net loss on cars and trucks just to Japan, and do nothing about it.

I am trying to offer something here and the reason the committee accepted this amendment in the first place, not this year but last year, is that this is a positive, aggressive effort, modest in scope, scaled down by targeting exactly on the problem.

Let us start selling American goods abroad. Let us help the smaller companies get into this act. That is what we are striving to do here and it makes good sense. It makes good economic sense.

In recent years much attention has been devoted to the need for the United States to improve its export performance. International trade has become substantially more important to the United States than in earlier years because of the direction of world events and the increasingly clear necessity to develop a strong export position to enhance the economic strength and welfare of our Nation, strengthen the value of the dollar, and increase employment. Exports now account for one of every eight jobs in America's factories and one in every four on America's farms.

Despite our historical national attitude of overall indifference to the need for exports, recent trends have made it obvious that we are living in a new international economic environment and we are not adjusting to it successfully. Although roughly 30,000 U.S. companies are now exporting, this figure includes only about 1 out of every 10 U.S. companies. Moreover, only 100 companies account for nearly one-half of all U.S. exports of manufactured goods. It is clear that many American companies are not taking full advantage of foreign market opportunities.

Export promotion and expansion has been recognized by Congress as critical to restoring the health of our economy. This year the U.S. balance-of-trade deficit may run to $50 to $60 billion. Clearly, we are not expanding our exports fast enough to pay for the increased imports brought about in part by oil price rises and in part by the greater economic strength and competitiveness of many of our trading partners. The United States simply can no longer delay a much more aggressive effort at export expansion.

A major opportunity for this expansion lies in the 20,000 businesses the Department of Commerce estimates could be exporting but are not. The increased participation of American businesses in exporting has been recognized as a national priority. Nonetheless, a number of factors discourage these firms from participation in foreign trade. This inactivity constitutes benign neglect of billions of dollars in potential export business.

The legislation before the Senate, the Export Trading Company Act of 1981, represents a multifaceted approach to the problem of restoring export competitiveness to the American economy. S. 734 is the product of nearly 3 years of concerted effort in the Senate and extensive hearings have been held on its provisions. The basic intent of this legislation is to encourage exports by facilitating the formation and operation of export trading companies. To this end, S. 734 deals effectively with two serious impediments in current law to the formation of export trading companies—the bar to U.S. banks having an equity position in, or control of these trading companies and the current uncertainty regarding antitrust exemptions for them under the Webb-Pomerene Act. By permitting U.S. banks to acquire ownership in export trading companies under specified conditions and with sufficient safeguards, banks will be encouraged to be active rather than reactive in export activities, providing needed financial resources and expertise. S. 734 also expands and clarifies the antitrust exemption for export trade associations and establishes a specific certification procedure that will eliminate the element of uncertainty in the current law.

I believe facilitating the establishment and operation of export trading companies is an important approach. This legislation had my enthusiastic backing in the last Congress and continues to have my equally enthusiastic support today. Mr. President, as a member of the Senate Banking Committee I have consistently supported the Export Trading Company Act and today I urge speedy consideration and passage of this important legislation.

I commend the Senator from Pennsylvania for his assistance and help on this matter.

Mr. HEINZ. Mr. President, I reluctantly rise in opposition to the amendment of my friends, Senator ARMSTRONG and Senator PROXMIRE, but I can do no less in this instance because as they know I was strongly in opposition to their position in the committee. I supported the Riegle amendment because I think it is meritorious for all the reasons my good friend from Michigan has stated. I wish to point out to my colleagues that after a very full debate in the committee the decision was made that the Senator's amendment made sense.

I think it is important that we provide the authority to do some experimentation, to try to make sure that if we are not getting the kind of progress we would like to see on export trading companies, that we have a tool in our kit with which to operate.

There are two points I wish to make here.

The first is that we all know the potential of export trading companies. The largest trading company that I know of has a whale of a lot of recognized potential. The Mitsubishi Trading Co., just in terms of its international transactions, exports, imports, worldwide transactions, does $60 billion a year.

Some of the smaller export trading companies do $20, $15 or $10 billion, not million, billion.

I would hate to see us inadvertently throw away the key that opens the door to the United States playing the kind of role that we are capable of playing but that heretofore we have been unable to play in international trade. It strikes me that this very modest provision, which would provide on an experimental basis to certain small businesses an export manager for no more than 12 months, might very well prove to be the kind of key that we need to unlock our export potential the same way other nations of the world have already done.

One other thing I would say is that the amount of money involved in this section of the bill, section 105, is indeed very small. Notwithstanding the fact that it is small I think we all recognize that we want to minimize outlays in fiscal 1981, 1982, and 1983.

We know we are in a tight budget situation, and leaving this section in the bill, does not preclude the Appropriations Committee from not funding this provision, should it decide to do so.

But if we take it out of the bill it will be excluded from consideration, probably for the foreseeable future, and that, I submit, is neither necessary nor wise.

If the Appropriations Committee decides not to fund it, I will support that decision.

But I think it is a mistake to remove the authorization, to remove the oppor-

tunity to take necessary steps at some future time should we so decide.

So, Mr. President, I oppose the Armstrong and the Proxmire amendment. I understand their motivation. They are nothing but the best, as I would expect. It is just that we have a disagreement.

Mr. ARMSTRONG. Mr. President, I appreciate the cheerful demeanor of the Senator from Pennsylvania, and I wish to respond in kind.

I am sorry we are not in full agreement on this matter.

I wish to sum up where we are.

The amendment that has been offered by the Senator from Wisconsin (Mr. PROXMIRE) and I, and a number of our cosponsors, simply strikes from the bill the existing provision which permits the Secretary of Commerce to grant $40,000 to export companies or to companies who wish to become export companies to hire export managers.

The Senator from Michigan has suggested I am against this because it is a new initiative. That is not the case at all. I am against it because it is a very poor idea. It is an idea of getting the Government into the business of deciding which companies should have export managers and which of them should have export managers paid for by the Federal Government. In my opinion, that is it. It is unrelated to the budget stringencies as a matter of policy. In fact, if I thought this were a good idea, which I do not, it is still not a timely idea. This is a year of budgetary restraint. It is the year where we are going to cut back on food stamps, nutrition programs, and Eximbank. We are going to cut back on foreign aid. We are going to cut back on housing programs. We are going to cut back on every traditional worthy program of the Federal Government.

And it is no year, in my judgment, to start up something new, especially something as questionable as this.

Second, it is suggested that this is a pro-small business idea. I will tell Senators this. I never talked to any small businessmen who think that the way to help them is to create new Government programs or to have the Federal Government doling out new employment. The Senator from Wisconsin is entirely right.

Third, it is suggested that this is just a small amount so what, it really does not amount to anything in a $1 trillion budget. It is only a couple million dollars.

That is true, Mr. President. I wish to point out based on this formula we are only talking about maybe a handful of firms. Yet the Senator from Michigan who proposed this idea in the first place said there are as many as 20,000 firms in the country that might conceivably need and qualify for this kind of a program.

So what we are really seeing here is an establishment on a small scale on an idea which has enormous budgetary consequences if it catches on and if in fact it is funded.

Last but not least, we are told by the Senator from Pennsylvania that this is just an authorization. Let us put it in here and see whether or not the Appropriations Committee will fund it.

I suggest to Senators that we are the policymakers. Let us make a decision now. I hope that the Senate will adopt the amendment, take this unwise provision out of the bill, and I point out that the very people who are expected to administer this provision, that is to say the administration, says that the amendment which Senator PROXMIRE and I have offered is a proper one and one which they support.

So, for all those reasons, I call for the adoption of the amendment.

Mr. President, it would now be my suggestion—I think we have completed debate on this issue, the yeas and nays have been ordered—and after consultation with the floor manager of the bill and with the leaders. I ask that we set-aside further consideration of this and proceed to the consideration of an amendment which Senator PROXMIRE and I are going to offer on a similar although—a similar subject so that we can have back-to-back votes on it if, in fact, a back-to-back vote is required.

Mr. HEINZ. Mr. President, I know of no objection on our side.

Mr. RIEGLE. I would have to object on this side because, first of all, I want a vote in order to find out where we are because I want to propose putting something in if this were to succeed. I hope it will not, but I want to know where we stand before we go any further.

The yeas and nays have been ordered, and if there is no further comment at this time I suggest that we vote and settle the issue.

Mr. ARMSTRONG. In view of the objection of the Senator from Michigan, we have no other recourse than to do so.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, before the roll is called, I ask unanimous consent that I be added as a cosponsor of the amendment of the Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I would be honored to do so. I ask unanimouse consent that the Senator from Virginia be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. EAGLETON. Mr. President, I strongly support expansion of U.S. export trade. It is good for this country's balance of trade and it is good for the profits of businesses that find foreign markets. But, I can find no justification whatsoever for the American taxpayers to be subsidizing the salaries of an export manager for these companies. The administration tells us we cannot afford CETA job training funds for unemployed youth and we have cut that program severely. We cannot afford to properly feed our elderly. And, yet, this provision would subsidize up to half the salary of an $80,000 a year executive for some profitmaking business. I strongly support taking this provision out of the bill.●

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado.

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER), and the Senator from Oregon (Mr. PACKWOOD), are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. DURENBERGER) would vote "yea."

Mr. CRANSTON. I announce that the Senator from Illinois (Mr. DIXON), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Alabama (Mr. HEFLIN) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. BRADLEY) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 68, nays 25, as follows:

[Rollcall Vote No. 81 Leg.]

YEAS—68

Abdnor	Garn	Nickles
Armstrong	Glenn	Nunn
Baker	Goldwater	Percy
Bentsen	Gorton	Pressler
Boren	Grassley	Proxmire
Boschwitz	Hatch	Pryor
Bumpers	Hatfield	Quayle
Byrd, Harry F., Jr.	Hawkins	Roth
	Hayakawa	Rudman
Byrd, Robert C.	Helms	Sasser
Chafee	Hollings	Schmitt
Chiles	Humphrey	Simpson
Cochran	Jepsen	Stafford
Cohen	Johnston	Stennis
D'Amato	Kassebaum	Stevens
DeConcini	Kasten	Symms
Denton	Laxalt	Thurmond
Dole	Long	Tower
Domenici	Lugar	Tsongas
Eagleton	Mattingly	Wallop
East	McClure	Warner
Ford	Metzenbaum	Weicker
	Mitchell	Zorinsky
	Murkowski	

NAYS—25

Andrews	Heinz	Matsunaga
Baucus	Inouye	Melcher
Biden	Jackson	Moynihan
Burdick	Kennedy	Pell
Cranston	Leahy	Randolph
Danforth	Levin	Riegle
Dodd	Long	Sarbanes
Exon	Mathias	Specter
Hart		

NOT VOTING—7

Bradley	Heflin	Williams
Dixon	Huddleston	
Durenberger	Packwood	

So Mr. ARMSTRONG's amendment (UP No. 60) was agreed to.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ARMSTRONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 61

(Purpose: To strike out section 106)

Mr. PROXMIRE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE), for himself and Mr. ARMSTRONG, proposes an unprinted amendment numbered 61:

Beginning with page 20, line 19, strike out all through page 21, line 12.

Redesignate succeeding sections accordingly.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that Senator NICKLES be added as a cosponsor on the preceding amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, this amendment I have sent to the desk is cosponsored by the distinguished Senator from Colorado (Mr. ARMSTRONG). This amendment strikes section 106 from the bill. Section 106 authorizes $10 million to be spent in each of the years 1982 through 1986, or $50 million for operating expenses of export trading companies. The original provision in committee was to authorize $100 million. On the morning of the markup, the administration made it plain it did not favor the provision at all. So the committee cut the $100 million authorization to $50 million. The amendment would cut it to zero. That would be in accordance with the administration's position.

I read an excerpt from a letter from the Secretary of Commerce, which says:

While the administration sympathizes with the goal of providing some direct financial backing for trading companies, we cannot advocate such a course in light of overall budget priorities.

Mr. President, there is no excuse to spend Government money for this purpose. Section 106 sends out the wrong signal to the American people. In considering Senate Concurrent Resolution 9, the Senate debated expenditures for veterans benefits, school lunches, social security benefits, and other social programs. Many of them were cut by 25 percent. Can we seriously propose $50 million more in this bill? Here we are authorizing $50 million that the Reagan administration does not want and tells us they do not need. Does it make any sense to spend $50 million on a new program, a program this administration enthusiastically supports, when the same administration tells us they do not want, do not need, this money?

The Secretary of Commerce tells us they cannot advocate such a course in light of overall budget priorities.

Mr. President I think all of us are very much aware of the fact that only a few days ago the Senate passed a resolution which was certainly unprecedented in recent years, which sharply reduced the rate of spending in a whole series of programs and actually made some very, very sharp cutbacks in others.

Some of those votes were agonizing for many Members of the Senate. For us to come along now with a new program and add $50 million at a time when the administration says they do not need it, do not want it, seems to me to be extraordinarily contradictory. It certainly would indicate we do not have the kind of convictions about economy and fiscal responsibility that we showed only a few days ago.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. MURKOWSKI). The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I rise in opposition to the Proxmire amendment. What the amendment seeks to do is essentially strike all of section 106, which authorizes the Economic Development Administration and the Small Business Administration to assist export trading companies, with loan guarantees or operating grants in meeting starting up expenses, in the process giving special weight to export benefits, and to furthering the involvement of minority business or agricultural concerns in the export market.

The Senator from Wisconsin has accurately stated that we cut the money in half in the committee from an annual authorization of $20 million to $10 million.

There was, however, also an implication in the Senator's statement that the administration has some programmatic problems with the amendment.

I think a careful examination of the testimony in the hearing record will reveal that Secretary Baldrige does not have any programmatic problem. He does have a budgetary problem, which I will speak to in a moment. But as to any programmatic concerns, Secretary Baldrige, in answer to my question in that regard, said:

Senator, I am sure you understand. We don't think these two provisions are necessarily that bad. It is this very difficult kind of budget cutting we have to do.

So the issue is money. In this case, Mr. President, when people say it is not the money but it is the principle of the thing, as is often the case in real life, you can be sure it is a question of money, not principle.

The fact is that this provision in the bill does not commit the administration or the Appropriations Committee to spend 1 cent. The reason this authorization, a noncumulative authorization, by the way—over 5 years, 1982 through 1986—is here is so that, in the event we decide that because of budgetary austerity, we cannot afford to do anything here in 1982 or 1983, we have the standby authority in 1984, 1985, and 1986 to do something.

Mr. President, this is a 5-year authorization. It means it will not be very easy to get at it again until 1986. That is an extremely long way away, and it is well into the time when we shall have, according to President Reagan's economic forecast, vast budget surpluses, shortages of employees, not shortages of jobs, and inflation so low that we can hardly see it. And let me say, Mr. President, all those scenarios are welcome, indeed.

It does not make a lot of sense to this Senator to foreclose for the promising years of 1984, 1985, and 1986 an opportunity to do something we might well want to do.

Mr. PROXMIRE. Will the Senator yield on that?

Mr. HEINZ. Not yet.

I might add, Mr. President, that programmatically, it is the small, new trading company, dealing primarily with smaller businesses, that is going to have the most difficulty getting started. It is that small, new trading company that is going to be most in need of the kind of assistance that section 106 can provide.

Mr. President, I believe that the thrust of the Proxmire amendment is to discriminate most against the very people we are trying to help the most; namely, small businesses. Incidentally, Mr. President, I think we are all very proud of our record of supporting small businesses. I know Senator PROXMIRE and Senator ARMSTRONG are, but in this instance, they are striking the established means of helping small business—the Small Business Administration and the Economic Development Administration. Not only that, the Secretary of Commerce as much as admits that he does not have any alternative ways to increase small or minority business involvement in these export trading companies.

So, Mr. President, I hope the Senate understands that this amendment is very different from the last one, where, I think, although I did not agree with it, there was a programmatic case made against the amendment. I do not think we can make a programmatic case against this amendment and neither does the administration.

UP AMENDMENT NO. 62

Mr. President, having said that, I do recognize that people here are terribly nervous about budgetary matters. So I am prepared to take what I believe is an appropriate middle ground. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an unprinted amendment numbered 62.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the material proposed to be stricken, insert the following:

INITIAL INVESTMENTS AND OPERATING EXPENSES

SEC. 106. (a) The Economic Development Administration and the Small Business Administration are directed, in their consideration of applications by export trading companies for loans and guarantees, and operating grants to nonprofit organizations, including applications to make new investments related to the export of goods or services produced in the United States and to meet operating expenses, to give special weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small, medium-size and minority businesses or agricultural concerns in the export market.

(b) There are authorized to be appropriated as necessary to meet the purposes of this section $5,000,000 for each of the fiscal years 1982, 1983, 1984, 1985, and 1986. Amounts appropriated pursuant to the authority of this subsection shall be in addition to amounts appropriated under the authority of other Acts.

Mr. HEINZ. Mr. President, essentially, what this amendment does is cut the amount of money in the bill per year from $10 million to $5 million for each of the 5 fiscal years, 1982 through 1986.

It is my hope that my colleagues, in the spirit of compromise, will accept this amendment as an alternative to what is being offered.

Mr. ARMSTRONG. Mr. President, I congratulate the Senator from Wisconsin for taking the lead with this amendment. I am pleased to join him as a cosponsor to the proposal to strike the funding authorization from this bill. I, for one, am opposed to the amendment offered by the Senator from Pennsylvania which, although it leads in the right direction, nonetheless leaves an authorization of $25 million of spending in a bill which requires no money whatsoever.

The bill we are considering, of which I am a cosponsor, is to be permissive, to say that certain private sector entities are to be permitted to form export trading companies in order to stimulate the growth of American exports. In other words, we are saying, "Here's an open door; if your company thinks it can make some money by going through that door, go ahead." Now we are talking about paying people to take this step across the threshold to international trade. This does not make sense from a free enterprise standpoint, it does not make sense from an export standpoint, and it certainly does not make sense, in a time when we are in the tightest budget fix that we have ever been in in the recollection of any living Senator, to say that we would authorize $25 million for such an unusual kind of spending just does not make any budgetary sense.

The bottom line is this, Mr. President: This is welfare for exporters. We can beat around the bush about it, but that is exactly what it is. If we pay people to go into the exporting business, that is a subsidy. A less polite, less tactful name for it is welfare. As one who has voted rather consistently to curb the growth of welfare in this country, I personally, am not about to vote to pay for this kind of program.

Mr. President, the administration agrees that the money is not needed. The Secretary of Commerce has written a letter outlining his opposition to this authorization. The Office of Management and Budget is opposed to this authorization, and I am certain that my colleagues on the Senate Budget Committee, who, right now, are meeting, seeking to find additional cuts to make so we can have a balanced budget in 1984, if not sooner, are certainly not going to support this.

Mr. President, the Senator from Pennsylvania is correct that this is only an authorization. Yet we all know that the game around here is to get something slipped into a bill as an authorization with the understanding that, after all, it is only an authorization and the final decision is for the appropriations process. But, once something is authorized, the argument is suddenly reversed. Then we are told, in support of a small initial appropriation, that we have to vote for this; after all, this has been authorized by law and we have made an implied commitment, a promise, we have set up a program, surely we are not going to vote to cut out something supported by law. So we get whipsawed back and forth.

Mr. President, there is no justifiable reason for a $50 million authorization, there is no justifiable reason for a $25 million authorization. The administration is against it, I guess I have made it clear that I am against it.

Let me emphasize in closing, Mr. President, that I am strongly in favor of the purpose of the bill, which is to remove existing legal restrictions on the right of certain private companies to form export trading companies. I think the future of this country's economy, in industry and agriculture, is increasing our export markets, and this bill will help us do it. The authorization is not required, in my opinion. Therefore, Mr. President, I shall urge my colleagues to vote against the amendment of the Senator from Pennsylvania and for the amendment of the Senator from Wisconsin.

Mr. HEINZ. Will the Senator from Colorado yield for a question?

Mr. ARMSTRONG. I am pleased to yield for unlimited purposes, Mr. President.

Mr. HEINZ. Mr. President, I know that the Senator from Colorado is an extremely vigilant man, but I have to point out to the Senator that this is the second shot he has had at this bill. He was a member of the committee last year, was a strong supporter of the bill in its entirety last year. He was a member of the committee; he did not object to this same provision, section 106 of the bill, last year.

He did not, as I recollect—if I am wrong, I am sure he will correct me—object to this section when it was $20 million per year, $100 million, last year. If he did, there was no vote or amendment offered, as I recollect.

Is my recollection correct?

Mr. ARMSTRONG. Mr. President, in response to the Senator I say that last year was last year; this year is this year.

One of the very last things that happened in the closing days of the last session of Congress was that I took the floor to oppose an increase of $38 million in the funding for Amtrak, a supplemental appropriation which was so unnecessary that even the Department of Transportation opposed the increase. Yet we could not muster the votes on the floor of the Senate to head off an increase of $38 million for that supplemental, which was so clearly unnecessary.

This year this body already has voted not only to rescind the $38 million in Amtrak but also to cut an additional $500 million out of that wasteful and extravagant program.

What I am saying is that the Amtrak vote and the Conrail vote and the $40 billion in budget cuts which have been approved by the Senate earlier this year show how different the political climate is this year from last.

Why did I not offer an amendment on this matter last year? Because you can only tilt at so many windmills at once. I did not think such an amendment would carry last year. This year I think it will.

This is a time for budgetary restraint, and I believe that the amendment which Senator PROXMIRE and I have offered is consistent with that restraint.

There is a time to start new programs. There is a time to create new ways to establish Federal programs and to spend Federal dollars. But clearly this year, and I would think for the next several years, is not a very likely or timely moment for that.

The Senator's recollection is correct, that I did not offer an amendment; but I do so now.

Mr. HEINZ. Mr. President, I happen to agree with the Senator entirely on the question of the budgetary priorities changing.

The reason I asked the question was not to draw him out on a question on which we are in substantial accord but to establish whether or not he thought that what he supported last year was welfare for exporting last year as opposed to welfare for exporting this year.

Mr. ARMSTRONG. Mr. President, let the record reflect that the Senator from Colorado, despite many misgivings, has supported welfare of different kinds on some occasions.

If last year I positioned myself as having supported a form of welfare which this year seems odious to me, I confess that inconsistency is not one of the hobgoblins of the mind of the Senator from Colorado.

Nonetheless, that the issue is clear. We should not crank this money into the budget.

I believe we are ready for a vote on this matter.

Mr. HEINZ. I thank the Senator for yielding.

Mr. ARMSTRONG. I thank the Senator for his courtesy in jogging my memory on this matter.

The PRESIDING OFFICER. The Chair thanks the Senator from California.

The Senator from Pennsylvania is recognized.

Mr. HEINZ. Mr. President, I ask unanimous consent that we temporarily lay aside for not to exceed 5 minutes the Proxmire amendment and the Heinz amendment to the Proxmire amendment for the purpose of allowing Senator MATHIAS to proceed.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 25

(Purpose: To establish an International Antitrust Task Force)

Mr. MATHIAS. Mr. President, I call up my amendment which is amendment No. 25, a printed amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS) proposes an amendment numbered 25.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 47, line 16, add the following title III:

SHORT TITLE

SEC. 301. This title may be cited as the "Commission on the International Application of the United States Antitrust Laws Act".

ESTABLISHMENT OF COMMISSION

SEC. 302. (a) There is established the Commission on the International Application of the United States Antitrust Laws (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of eighteen members who shall be appointed by the President as follows:

(1) four members from the executive branch of the Government:

(A) the Vice President of the United States;

(B) the Assistant Attorney General for the Antitrust Division;

(C) the Chairman of the Federal Trade Commission; and

(D) the Legal Advisor of the Department of State;

(2) four members from the Senate, two members to be named upon the recommendation of the majority leader, and two members to be named upon the recommendation of the minority leader;

(3) four members from the House of Representatives to be named upon the recommendation of the Speaker of the House of Representatives; and

(c) The Chairman of the Commission shall

(4) six members from the private sector, be the Vice President of the United States.

(d) The President shall designate the Assistant Attorney General for the Antitrust Division and the Legal Advisor of the Department of State as the Vice Chairmen of the Commission.

(e) The majority and minority leaders and the Speaker of the House shall make recommendations for the appointments to be made pusuant to subsection (b) within thirty days of the enactment of this Act.

(f) The President shall make all of the appointments in accordance with subsection (b) after receiving the recommendations set forth in paragraphs (2) and (3) of subsection (b), but such appointments shall be made no later than sixty days after the date of enactment.

(g) The first meeting of the Commission shall be called by the President within thirty days following the date such appointments to the Commission are made.

(h) Not more than one-half of the members of each class of members set forth in paragraphs (2), (3), and (4) of subsection (b) shall be from the same political party.

(i) The term of office for members shall be for the term of the Commission.

(j) A vacancy in the Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(k) Ten members of the Commission shall constitute a quorum (but a lesser number may hold meetings).

(l) The membership of the Commission shall be selected in such a manner as to be broadly representative of the various interests, needs, and concerns which may be affected by the international aspects of the United States antitrust laws.

PURPOSES OF THE COMMISSION

SEC. 303. (a) The Commission shall—

(1) conduct a comprehensive study of and make recommendations concerning the international aspects of the antitrust laws of the United States, the applicable rules of court, related statutes, administrative procedures, and their applications, their consequences, and their interpretation by the courts and Federal agencies (hereinafter referred to as "the United States antitrust laws"); and

(2) make periodic reports to the President and to the Congress concerning its activities and make a final report to the President and the Congress concerning such comprehensive study.

(b) Such comprehensive study shall specifically address—

(1) the application of the United States antitrust laws in foreign commerce, and their effect on—

(A) the ability of United States enterprises to compete effectively abroad; and

(B) the ability of United States enterprises to compete or deal effectively with foreign controlled enterprises in market and nonmarket economies;

(2) the effect of the application of the United States antitrust laws on United States relations with other countries;

(3) the jurisdiction and scope of the application of the antitrust laws to foreign conduct and foreign parties;

(4) the issue of reciprocity between nations with respect to mutual access to markets, equal opportunities for foreign investments, and enforcement of antitrust laws;

(5) the applications of United States rules of court relating to the enforcement of antitrust laws in the context of international transactions (for example, the "per se" and "rule of reason" doctrines);

(6) the application of the United States antitrust laws to joint ventures, mergers, acquisitions, and distributions and licensing arrangements between and among the United States and foreign based enterprises; and

(7) the proper scope and effect of the following on the application of the United States antitrust laws:

(A) the rules governing sovereign immunity;

(B) the defense of "foreign sovereign compulsion"; and

(C) the doctrine of comity.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 304. (a) Members of Congress, who are members of the Commission, shall serve without compensation in addition to that received for their services as Members of Congress, but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) Notwithstanding section 5533 of title 5, United States Code, any member of the Commission who is in the executive branch of the Government shall receive the compensation which he would receive if he were not a member of the Commission, plus such additional compensation, if any, as is necessary to make his aggregate salary not in excess of the highest rate for employees compensated at the rate of GS-18 of the General Schedule under section 5332 of title 5, United States Code, and he shall be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of the duties vested in the Commission.

(c) Members from the private sector shall each receive compensation not exceeding $200 per diem when engaged in the performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

POWERS OF THE COMMISSION

SEC. 305. (a)(1) The Commission or, on the authorization of the Commission, any subcommittee thereof, may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee may deem advisable. Subpenas may be issued to any person within the jurisdiction of the United States courts, under the signature of the Chairman or Vice Chairmen, or any duly designated member, and may be served by any person designated by the Chairman, the Vice Chairmen, or such member. In the case of the failure of any witness to comply with any subpena or to testify when summoned under authority of this section, the provisions of sections 102 through 104, inclusive, of the Revised Statutes (2 U.S.C. 192-194), shall apply to the Commission to the same extent as such provisions apply to Congress.

(2) For purposes of section 552(e) of title 5, United States Code, the Commission shall not be considered to be an agency.

(b) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairmen, such information as the Commission deems necessary to carry out its functions under this title.

(c) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services in accordance with the provisions of section 3109 of title 5, United States Code, but at rates not to exceed $200 per diem for individuals.

(d) The Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties to such extent and in such amount as are provided in appropriations Acts.

FINAL REPORT

SEC. 306. The Commission shall transmit to the President and to the Congress not later than one year after the first meeting of the Commission, a final report containing a detailed statement of the findings and conclusions of the Commission, including its recommendations for administrative, judicial, and legislative action which it deems advisable. Any formal recommendation made by the Commission to the President and to the Congress must have the majority vote of the Commission as present and voting.

EXPIRATION OF THE COMMISSION

SEC. 307. Sixty days after the submission to Congress of the final report provided for in section 6, the Commission shall cease to exist.

AUTHORIZATION OF APPROPRIATION

SEC. 308. There are hereby authorized to be appropriated such sums as may be necessary to carry out the activities of the Commission.

EFFECTIVE DATE

SEC. 309. The provisions of this title shall take effect upon the date of enactment of this title.

Mr. MATHIAS. Mr. President, I am a cosponsor of the Export Trading Company Act. I wish to do everything that I can do to make sure that it gets passed

and it gets signed into law at the earliest possible time.

If the United States is going to pay just for the energy we have to import in the next 19 years, to the end of this century, we will have to expand our exports tenfold.

So, there is urgency in getting this bill into law, getting it into action.

I have also proposed this amendment to establish a 12-month task force to study the larger impact our antitrust laws have on the ability of U.S. firms to compete overseas.

I am very happy that the distinguished Senator from Mississippi (Mr. COCHRAN) has joined me as a cosponsor of the amendment.

The export trading company bill addresses a very narrow but important aspect of the problem, and the task force proposed in this amendment would focus on the whole gamut of issues raised by the extraterritorial application of the U.S. antitrust laws.

I think very few of us question the importance of exports to the economic health of the country. Exports now contribute more to our gross national product than private corporate investment does. One out of every eight jobs in the country is involved in exports. One dollar out of every three of U.S. corporate profits comes from international activities. One out of every 3 acres of farmland produces for export.

Yet, despite the critical importance of exports to our economic well-being, the United States still lags far behind its major trading partners in international trade. The U.S. share of free world exports has steadily decreased, from 18.2 percent in 1960 to 12.1 percent in 1980. In Germany, France, Italy, and the United Kingdom exports account for more than 50 percent of all goods produced, while in the United States they account for only 14 percent.

Much of the blame for our poor export performance can be pinned on the maze of disincentives to trade which the Federal Government has built up over the years. Last winter, the President's Export Council came out flatly in favor of removing self-imposed disincentives to U.S. exports. The Council recommended recently that every effort be made to facilitate U.S. export efforts and overseas operations by freeing U.S. firms from unnecessary antitrust constraints and uncertainties. To help accomplish this, the Council specifically recommended the enactment of this international antitrust task force bill, the same proposal contained in this amendment.

The 12-month task force would enable us to examine those issues in a thorough and thoughtful way. It would report its findings to the President and to Congress on what changes, if any, should be made to promote the doctrine of competition worldwide. In addition to the President's Export Council, the bill had the support of the U.S. Chamber of Commerce and the National Association of Manufacturers. We held extensive Senate hearings and the bill attracted 19 cosponsors and passed the Senate without a dissenting vote. Unfortunately, in the press of business in the final days of the 96th Congress, the House of Representatives failed to act on the bill. On February 5, I reintroduced the bill and Representative MCCLORY has already introduced a companion bill in the House of Representatives.

I have discussed this proposal with the floor managers of the pending legislation, S. 734, and I believe that they generally support the establishment of an international antitrust task force.

As a matter of fact, one of the distinguished cosponsors of the bill last year was the Senator from Pennsylvania, the manager of the bill today, Mr. HEINZ.

So, I am hopeful that this legislation will pass not only in this Congress but this year.

The PRESIDING OFFICER. The Chair reminds the Senator his 5 minutes have expired.

Mr. HEINZ. Mr. President, I ask unanimous consent that the Senator be yielded 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Maryland is recognized for 3 additional minutes.

Mr. MATHIAS. Mr. President, I am well aware that for a variety of reasons the pending amendment has the potential of slowing down the forward progress of S. 734 in the other body, and I am reluctant to add any burdens that might slow down the progress of the bill that I not only support but which I think is urgently necessary.

So, if it is the judgment of the manager of the bill that this is the case, I would consider withdrawing the amendment.

Mr. HEINZ. Mr. President, will the Senator from Maryland yield?

Mr. MATHIAS. I am happy to yield to the Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I thank the Senator from Maryland for his excellent statement and for his excellent amendment.

I, in principle, can support his amendment, but I do believe that it is important to keep S. 734 as clean as possible so that we can keep the focus here today on export trading companies. We have so far been able to do so.

I assure my good friend from Maryland that with respect to his bill, S. 432, that he can count on my assistance in moving that bill ahead and as it is considered by his committee, the Judiciary Committee. I believe it is a good bill.

I believe that the task force he seeks to establish is extremely timely and important. As a matter of fact, I ask unanimous consent that at the appropriate time he add me as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS. Mr. President, I am very happy to add the Senator from Pennsylvania as a cosponsor of the bill.

His support and he will be critical to the early passage of it. I hope that it can be passed in the very near future.

I will see that his name is added as a cosponsor.

The bill is, of course, identical with this amendment. It still has, as it did last year, very widely expressed support, and I am confident it can be passed by the Senate in the normal course of business.

So I will accept the suggestion of the Senator from Pennsylvania and at this time, Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. HEINZ. Mr. President, will the Senator yield further?

Mr. MATHIAS. Yes.

Mr. HEINZ. Mr. President, I express my gratitude to the Senator from Maryland and also note for the RECORD that he has been an exceptionally strong supporter of S. 734, our export trading company legislation.

He has been a great advocate of a strong export policy. He has been a great advocate of a strong economy, and it is due to his support and the support of many like-minded Senators that we have been able to bring S. 734 before the Senate at this relatively early date.

I thank the Senator from Maryland for his cooperation.

Mr. MATHIAS. Mr. President, I thank the Senator from Pennsylvania.

UP AMENDMENT NO. 62

Mr. ARMSTRONG. Mr. President, the pending business I believe is the Heinz amendment in the nature of a substitute to the Proxmire-Armstrong amendment.

The PRESIDING OFFICER. The Heinz amendment is the substitute for the language proposed to be stricken by an amendment of the Senators from Wisconsin and Colorado.

Mr. ARMSTRONG. Mr. President, I thank the Chair.

In a moment I am going to move to table the Heinz amendment.

Before I offer that motion I just wish to make two observations since I expect this shall be the last time I will speak during the course of the debate on the amendment or on the bill.

First of all, I want to again congratulate those who brought this bill to the floor because, in my opinion, both from the standpoint of the long-run future of the economy of this country and from the standpoint of getting our finances in shape, from a budgetary standpoint, the prestige and security interests of this country, and in every way, this is an important and worthy bill.

The objection which the Senator from Wisconsin and I have to funding is one which we have already explained. There is no need to put $50 million in authorization in this bill. The administration is against it, the Secretary is against it, OMB is against it, and I trust the Senate will be against it.

The parliamentary situation, to recap, is simply that Mr. PROXMIRE and I have offered an amendment to delete all of the $50 million in spending which is authorized in the bill.

The Senator from Pennsylvania (Mr. HEINZ) has offered a substitute which would set the level at $25 million.

In order to clarify the situation and to permit Senators to dispose of the Heinz amendment without voting against what appears to be a cut in the amount of the authorization, I do now move to table the Heinz amendment.

Mr. HEINZ. Mr. President, will the Senator withhold his motion for one moment?

Mr. ARMSTRONG. Surely.

Mr. HEINZ. I think we are at a point where we are going to be able to have some back-to-back votes. Hopefully there will be one vote on the motion to table and the motion to table will not succeed—that is my hope and expectation. We will then voice-vote everything else. The Heinz amendment will be adopted, and then we can proceed to final passage—at least that is my hope. But the key to it is, I think, we are very close to wrapping this up.

Before we do that, Mr. President——

Mr. ARMSTRONG. Mr. President, before the Senator moves on from that point, if the Senator will yield, I take it it would be his intention to have a voice vote whether the tabling motion carries or not.

My expectation is that the motion to table will carry. In short, what the Senator is saying is that if the vote on the tabling motion is conclusive, in effect, before taking the money out, you are going to be for leaving it in for at least $25 million if the vote is not to table.

Mr. HEINZ. I do not know if I can go that far, but obviously if the motion to table does not succeed, we will then voice-vote the Heinz amendment, and that voice vote would be presumably successful in view of the will of the Senate, and then we could voice-vote final passage.

Mr. ARMSTRONG. Is it not the Senator's intention if the tabling motion succeeds also to proceed to a voice vote on the Proxmire-Armstrong amendment?

Mr. HEINZ. That would be the Senator's intention. I cannot speak for other Members.

Mr. ARMSTRONG. There is no need for repetitive rollcalls.

The PRESIDING OFFICER. If the amendment offered by the Senator from Pennsylvania prevails, under the precedents of the Senate, the amendment of the Senator from Wisconsin is rendered moot and is not voted upon.

Mr. HEINZ. I think we all understand that.

Mr. President, before we return to the business at hand, I want to take a moment to express my appreciation for the work of the Senator from Illinois (Mr. DIXON). He has been an unswerving supporter of this bill throughout its path through the Senate. Unfortunately, Senator DIXON cannot be here today for the final vote on S. 734, but I think the RECORD should reflect not only his support for the bill but also for the good work he has done as a member of the committee to help keep the bill intact and keep it strong.

In doing so I might add he has been following in the footsteps of his predecessor, Senator Adlai Stevenson of Illinois, to whose seat he succeeded. Senator Stevenson, of course, is really the true father of the export trading company legislation before us.

If his work on this bill is any indication, Senator DIXON is a more than worthy successor to Senator Stevenson.

Mr. PROXMIRE. Mr. President, will the Senator from Colorado withhold his tabling motion for just a minute so that I can make clear what we are voting on?

Mr. ARMSTRONG. Mr. President, I am pleased to withhold my request.

Mr. PROXMIRE. Mr. President, of course, I fully congratulate the distinguished Senator from Colorado. I do think, however, that it is clear that the Heinz amendment, if it carries, will mean we will have $25 million, that there will be authorized $25 million of spending which is likely to follow that.

If the Heinz amendment is defeated, it is clear that we will not spend that $25 million. In fact, it should be overwhelmingly clear to everybody here that we will save $25 million.

There should be no confusion on this because, as I understand it, this is an amendment which, as the Chair properly said, will make the Armstrong-Proxmire amendment, which would knock out the entire $50 million and go to zero funding, make that amendment moot, invalid, knock it out of the box entirely.

So the issue before the Senate in voting for the Armstrong motion to table, those who want to save $25 million would vote "aye," in favor of tabling, and those who think there should be $25 million in the bill will vote "no."

Mr. ARMSTRONG. Mr. President, I think we are ready for the motion.

The PRESIDING OFFICER. Does the Senator make the motion to table?

Mr. ARMSTRONG. I do so move and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Colorado to table the amendment of the Senator from Pennsylvania.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER) and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Illinois (Mr. DIXON), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from Louisiana (Mr. LONG) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. BRADLEY) is absent on official business.

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 55, nays 38, as follows:

[Rollcall Vote No. 82 Leg.]

YEAS—55

Abdnor	DeConcini	Hatch
Armstrong	Denton	Hawkins
Baucus	Dole	Hayakawa
Bentsen	Domenici	Helms
Biden	Eagleton	Hollings
Boren	East	Humphrey
Boschwitz	Exon	Johnston
Bumpers	Ford	Kassebaum
Byrd, Harry F., Jr.	Glenn	Kasten
Chiles	Goldwater	Lugar
	Grassley	Mattingly
McClure	Proxmire	Stafford
Melcher	Pryor	Symms
Mitchell	Quayle	Thurmond
Moynihan	Roth	Tower
Murkowski	Rudman	Wallop
Nickles	Sasser	Warner
Nunn	Schmitt	Zorinsky
Percy	Simpson	

NAYS—38

Andrews	Gorton	Matsunaga
Baker	Hart	Metzenbaum
Burdick	Hatfield	Pell
Byrd, Robert C.	Heflin	Pressler
Cannon	Heinz	Randolph
Chafee	Inouye	Riegle
Cochran	Jackson	Sarbanes
Cohen	Jepsen	Specter
Cranston	Kennedy	Stennis
D'Amato	Laxalt	Stevens
Danforth	Leahy	Tsongas
Dodd	Levin	Weicker
Garn	Mathias	

NOT VOTING—7

Bradley	Packwood	Williams
Dixon	Huddleston	
Durenberger	Long	

So the motion to table UP amendment No. 62 was agreed to.

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which the motions to lay on the table was agreed to.

Mr. HEINZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, is the pending business now the Proxmire-Armstrong amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. ARMSTRONG. Mr. President, I suggest we move to a vote and have it by a voice vote.

Mr. METZENBAUM. Mr. President, I ask for the yeas and nays.

Mr. President, I withdraw that request.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado and the Senator from Wisconsin.

So the amendment (UP No. 61) was agreed to.

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HEINZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 63

(Purpose: To recognize the importance of agricultural exports)

Mr. PRESSLER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

Mr. HEINZ. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator is correct.

Will the Senate please be in order? Will Senators please take their seats?

The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. PRESSLER) proposes an unprinted amendment numbered 63.

Mr. PRESSLER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 25, between lines 18 and 19, insert the following:

"(6) agriculture constitutes the foundation of the economy of the United States and will continue to be a leading sector in U.S. export growth;" and renumber the remaining subsections accordingly.

Mr. PRESSLER. Mr. President, I shall not take very much time as I have worked out this amendment with both the minority and the majority leaders earlier today.

I felt it very appropriate that agriculture be included in the findings in this bill because it is such an important part of our exports. Indeed, agriculture is our leading export.

The purpose of having agriculture in the findings of the act is that for too long Washington has thought of international trade as being merely industrial products. The fact of the matter is that agriculture is our chief export but it gets very little help and agricultural products are often sold to other nations on a concessionary basis.

This means that farmers, small businessmen, and farming communities pay for part of our trade bill.

I want agriculture to be treated on an equal basis and this amendment is a step in this direction.

In the future, administrators and lawyers interpreting this act will be able to look at the language contained in my amendment as a basis to work more vigorously for farm exports.

Mr. President, this amendment recognizes the importance of agricultural exports to U.S. international trade. This point seems indisputable and I hope that the managers of the bill will be able to accept it as a useful addition to the Export Trading Companies Act.

This amendment simply adds wording to the findings section of the bill. The amendment reads: "agriculture constitutes the foundation of the economy of the United States and will continue to be a leading sector in U.S. export growth."

The United States exported $31.975 billion worth of agricultural products in 1979, and preliminary figures indicate that 1980 agricultural exports were valued at about $40 billion. One-third of American agricultural production is exported. The agricultural trade surplus is approaching $30 billion or more. These facts should be recognized in that section of this bill which recognizes the increasing importance of exports to the U.S. economy as a whole.

As I indicated in testimony to the Senate Agriculture Committee on March 23, 1981, my own State of South Dakota exports over 20 percent of its farm produce. The farmers and ranchers of South Dakota are interested in seeing that percentage increase.

With that, Mr. President, let me say again that I hope the managers of the bill will find this additional language to be an acceptable and worthwhile addition to the bill.

Mr. President, small agricultural businesses no less than small manufacturers would be more active in exporting their goods overseas if they possessed the technical knowledge and experience which are essential for successful operation in the complicated business of selling their goods in foreign markets.

Already, American agriculture is the greatest success story in U.S. international trade. The U.S. agricultural trade surplus of over $24 billion last year helped greatly to diminish the awesome cost of importing $93 billion worth of foreign oil. Our food and fiber exports are essential for world survival and will continue to be in great demand as the world experiences a near doubling of its population by the end of the 20th century.

Mr. President, the great success of U.S. agricultural production lies principally in the fact that most of the exportable production is controlled by small and medium sized owner-operators of American farmland. The United States and the world have a tremendous vested interest in insuring that these producers continue to battle the great odds they must face—unpredictable weather, an uncertain economy, and sometimes questionable Government policies—in order to guarantee the continual production of food and fiber.

While most food production is controlled by small producers, the foreign marketing of that food is controlled by a very small handful of companies. They have been very successful in the export business. It is time to offer agricultural businesses some encouragement to expand their marketing potential in the world market.

Mr. HEINZ. Mr. President, the Senator is entirely correct. We have examined the amendment. I think we can certainly accept it on this side.

Mr. PROXMIRE. Mr. President, I am delighted to accept it on this side.

Mr. President, I might add that I think we all owe tribute to the Senator from Pennsylvania, who has done a superb job in handling this bill in committee and on the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Dakota.

The amendment (UP No. 63) was agreed to.

Mr. HEINZ. Mr. President, I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

● Mr. BENTSEN. Mr. President, we hear a great deal about America's problems in international trade. Year after year we run a balance of trade deficit of about $30 billion. There is general agreement that we "must do something" to remain competitive in vital world markets.

But despite this vocal and very legitimate preoccupation with our trade performance, the Congress has been unable to enact legislation that would strengthen our hand in the export area. Not one significant element of the omnibus trade bill drawn up by the export caucus last year has become law.

The export trading company legislation, currently under consideration by the Senate, is an excellent opportunity to begin the process of eliminating disincentives to American exports; this legislation, which was passed unanimously by the Senate last fall but floundered in the House, will make American business better able to meet the terms of competition in the quest for international markets.

As an original cosponsor of S. 734 and its predecessor in the last Congress, I am convinced this legislation can make an important contribution to America's trade performance in the decade of the eighties.

No one should pretend that S. 734, despite its obvious advantages, constitutes some magical solution to our trade problems. Before America can return to world economic leadership and compete successfully in the international marketplace, we must demonstrate that we can put our own economic house in order. It will take time, sacrifice, and discipline to achieve the sort of fundamental reforms required to restore a healthy, dynamic American economy characterized by stability and real growth. But we have begun the process and as we succeed our trade performance will inevitably improve.

The long-term nature of our economic problems should not, however, discourage us from taking steps that will have an immediate and favorable impact on our ability to export. The time has long since passed when American business and industry can accept unique, self-imposed restraints on our ability to market our products abroad.

We have seen that efficient export trading companies, able to provide a wide variety of services for their clients, have been an essential ingredient in the commercial success of nations like Japan that have emerged as consistent winners in the battle for exports.

Let us provide this advantage to our exporters. The provisions of S. 734 would encourage thousands of smaller and medium-size U.S. businesses—currently put off by the risk and complexity of exporting—to go after international markets. Trading companies of the type envisioned by this legislation will help spread out the risks of foreign trade and absorb currency fluctuations. They will help identify emerging market opportunities, assist in organizing joint construction projects abroad, and handle the logistics of foreign trade that presently deter so many potential exporters.

In addition, this legislation helps clarify many of the long-standing antitrust ambiguities that hinder the formation of American consortia to bid on significant export projects. Senator DANFORTH and I have long been interested in the effort to update the Webb-Pomerene Act and make it applicable to the export of services as well as goods. S. 734 accomplishes that objective. It also expands and clarifies the antitrust exemption for export trade associations and transfers administration of the act to the Department of Commerce.

It creates an office within Commerce to promote joint export activities and establishes a specific certification pro-

cedure that will eliminate the element of uncertainty in current law.

I am also enthusiastic, Mr. President, about the banking aspects of the Export Trading Company Act which permit the U.S. banking community to participate in export trading companies and provide the financial resources and expertise that have become such an essential ingredient in the success of our competitors. We have seen, time and again, that the ability to offer attractive credit terms to potential foreign buyers often means the difference between winning and losing sales.

While the United States has traditionally discouraged relationships between banks and trading companies, our competitors in trade have gone in the opposite direction and, with bank-owned trading companies, have frequently gained a competitive advantage over U.S. exporters. By permitting U.S. banks to acquire ownership in export trading companies under specified conditions and with appropriate safeguards, S. 734 would provide an important new asset in our drive to restore export competitiveness to the American economy.

For too long, Mr. President, this Nation has approached international trade as a luxury rather than a necessity.

Today success in the world of trade has become an indispensable ingredient in domestic prosperity. The United States has been slow to adjust and adapt to the changing environment of trade, and our share of world exports has decreased dramatically as a result.

I can see no good reason to continue to deny our exporters the support and assistance of full-fledged American export trading companies. Enactment of S. 734 will help even up the rules of the game and enable America to compete more effectively for world markets.●

● Mr. PERCY. Mr. President, I am an enthusiastic supporter of this legislation that will make a significant contribution to this country's export effort. I supported similar legislation last year, when the Senate passed a bill by a vote of 77 to 0, and I am a cosponsor of this year's legislation.

It is highly appropriate that this bill is one of the very first to come to a vote this year. We have had several measures on the floor that will move the President's domestic economic recovery legislation forward. This is the first major bill of this Congress that will advance our international economic position, and I commend Senator HEINZ and the Banking Committee for moving so expeditiously to bring this to a Senate vote.

Mr. President, our export performance over the past decade has been lackluster. Our merchandise trade has been seriously out of balance the past 4 years, with deficits of over $30 billion twice since 1977. The trade balance improved somewhat last year, but the Commerce Department still projects a preliminary 1980 trade deficit of over $26 billion. Moreover, these massive imbalances look even larger when compared with the relatively smaller deficits earlier in the 1970's. The 1976 trade deficit was a mere $9 billion. The previous year, 1975, we even scored a surplus of $9 billion. So massive trade deficits are not what we are accustomed to.

I am concerned not only that we seem to be losing our ability to finance our own imports but that we are also losing our global share of exports. In the last decade, the U.S. share of world markets declined from over 21 percent to 17.4 percent, the largest relative decline among major industrial exporters.

The goal of this legislation is to improve U.S. export performance by furthering the development of U.S. export trading companies. Only 10 percent of the 250,000 manufacturing firms in the U.S. export. The majority of these businesses are small and medium sized; many of them would export if they could cope with the risks and complexities of exporting. The Department of Commerce has estimated that up to 20,000 additional U.S. manufacturers and agricultural producers could export. It is in the Nation's best interests that these firms begin to market goods and services abroad. S. 734 will facilitate that movement of small businesses into the export field.

It comes as no surprise that more of these firms do not get involved in the export sector. The disincentives have simply been too strong.

Just this winter this matter was addressed by a distinguished panel of private citizens, the Japan-United States economic relations group. U.S. Ambassador Robert Ingersoll is the American chairman of the group, and Ambassador Nobuhiko Ushiba, former State Minister for External Economic Affairs, is his Japanese counterpart. An important part of their January 1981 report states:

> Solutions to the problems hindering further United States export growth are even more important in a global context than that of the bilateral imbalance. Even so, the Group believes one of the most important factors in the bilateral trade relationship is the management and performance of the United States economy, particularly government and industry policies toward exports. No change would improve the United States-Japan economic relationship more than an improvement in the fundamental strength of the United States economy. . . .
>
> In addition, United States exports to Japan and indeed to all the world are inhibited by a lack of United States business attention to foreign market opportunities and by government disincentives to exporting. Industrial exports account for a noticeably lower percentage of GNP in the United States than any other advanced industrial country. Much of American business has traditionally had little interest in foreign markets. The size and familiarity of the American domestic market, combined with ignorance about foreign markets, have deterred American firms from realizing important foreign market opportunities. In addition, a variety of United States laws and government policies tend to make exporting less attractive.

Mr. President, that is a candid assessment of the U.S. trade position and where remedial action should be directed. The Japan-United States economic relations group has pinpointed, in their excellent analysis, one of the primary reasons for our poor export record. This legislation before us today will move us off dead center and will begin to reverse those policies that tend to make exporting less attractive.

The Export Trading Company Act has a number of important provisions, but I would like to highlight just a few. Perhaps one of the most significant provisions is in title II of S. 734 where a new procedure is outlined for certification of export trade associations and export trading companies. Once an association or company has been certified, they can then apply for exemption from the antitrust laws for the purpose of marketing products abroad. One of the grievances that small- and medium-sized businesses have had over the years is the threat that if they joined with other firms to market products overseas, the Justice Department or Federal Trade Commission would view this as a breach of the antitrust laws. The result was a strong reluctance to export. This carefully-worded section granting antitrust immunity, limited in scope to what is specified in the certification, provides business with a much greater degree of certainty and should offer a major incentive for joint ventures in exporting.

Title I of the bill also contains important provisions relating to banks and their role in boosting our export performance. Under the provisions of S. 734, banks will be authorized to invest up to 5 percent of their capital in export trading companies. As much as $10 million can be invested in export trading companies by banks, so long as this investment does not make the trading company a subsidiary of the bank. To encourage these investments, the bill allows investments of this type to go forward without the approval of bank regulatory agencies. Of course, in cases where investments exceed $10 million, the appropriate regulatory bodies would be called on to review the investment. In cases where more than 50 percent of the stock of an export trading company would be purchased by a bank, regulatory agency approval is also required.

A third very important part of this bill is section 104 which directs the Secretary of Commerce to promote and encourage the formation and operation of export trading companies. On this type of outreach program could depend the whole success of the other key parts of the bill. Export trading companies of the magnitude envisioned by the legislation are a new aspect of the American economic landscape. Many smaller firms, as I mentioned earlier, have studiously avoided exporting. We need to get the word out to them that some of the disincentives have been reduced and others have been eliminated outright. As with all new endeavors, success of export trading companies will hinge on the success we have in communicating the new terms of the law.

Mr. President, I am greatly encouraged by the Senate's speedy consideration of this legislation. It is important for the entire country, but it will also have a marked impact on my own State of Illinois, which is already one of the premiere exporting States of the Nation. In agricultural exports, we have consistently ranked No. 1, with a wide range of agricultural products. Our top ex-

ports have been feed grains and soybeans. One of every two farming jobs rely on exports in my State and we have always sought new ways to market exports and we are always looking for new markets for our products.

In manufacturing, Illinois ranks second in the United States in exports. Machinery, food products, chemicals and transportation equipment are by far the most important manufactured exports, accounting for one of every nine jobs. Moreover, the manufacturing export sector is spread throughout the State and is not concentrated just in Chicago. In the Chicago economy, about 6 percent of the work force had jobs relating to exports, but in each of Decatur, Peoria, and Springfield, well over 20 percent of the work force jobs depend on exports.

In short, Mr. President, exporting is a way of life in my home State. We know the value of cultivating foreign markets and Illinois farmers, businessmen, and workers have traditionally given their support to expanding overseas opportunities. I know my fellow Illinoisans will welcome passage of this bill and the new export instruments it promises.●

● Mr. GLENN. Mr. President, I rise to speak in support of S. 734, a bill to encourage exports by facilitating the formation and operation of export trading companies. I cosponsored this legislation last year and the reasons for supporting it this year are even more compelling. The purpose of this bill is to improve U.S. export performance at a time when American companies are facing increasingly vigorous competition in the international marketplace. From every corner of the world, government planning and financing of foreign trade challenges the resources of American firms. To meet this challenge, American companies must organize the most efficient business operations possible and we in Government must do what we can to help American firms improve their competitive edge.

One way in which we can do this is by facilitating the formation of trading companies. The trading company is not a new idea. It is as old as commerce itself and has enjoyed great success in other countries. In Japan, for example, the top 10 trading organizations, the Sogo Shoshas, account for approximately 60 percent of Japan's imports and 50 percent of its exports. Trading companies have also played an important role in the economic growth of many European countries. Yet, despite their historical and international success, trading companies have not flourished in the United States.

There are several reasons—both economic and legal—for this failure. It is my contention that the economic conditions no longer prevail and that the legal restraints are equally outdated. First, we have been generally self-sufficient for the bulk of our economic needs throughout our Nation's history. Second, the industrial revolution occurred early in our history and its effects spread quickly. This made the acquisition and distribution of goods easy and further reduced our need for foreign trade. Third, the large size of our domestic market meant that American businessmen had ample growth opportunities close at hand and involving relatively small risk. These factors, all the products of our unique geographic and economic heritage, limited the attractiveness of and need for foreign trade companies. But these unique conditions no longer prevail. The interdependence and competitiveness of the world market make it impossible for the United States to sustain its economic growth while operating on outdated notions of resource self-sufficiency in limited domestic markets.

Unfortunately, Federal laws and regulations limit our ability to respond effectively to these new challenges. For example, Government regulations prevent U.S. banks from offering many important trading services. In addition, antitrust uncertainties deter many U.S. firms from cooperating with other U.S. producers in their organization of export activities. These restrictions are anachronisms. They hamper American firms at a time when foreign governments are cooperating with and, in many instances, even subsidizing and directing the export efforts of ther own firms. The result is that our unilateral export restrictions cost American businessmen opportunities abroad and cost American workers jobs at home.

S. 734 addresses many of these obstacles and facilitates the formation and operation of export trading companies. It does so by allowing banking organizations to play a significant role in the future success of American export trading companies. In the past, many small- and medium-sized firms found foreign markets difficult to penetrate and too costly to do business in. That is one of the reasons why the Commerce Department estimates that some 20,000 smaller U.S. firms who could profitably export presently do not. Bank participation will enhance opportunities for small- and medium-sized firms to enter world markets by giving them access to the capital, financing, and marketing capabilities heretofore possessed only by larger firms.

While the degree of future bank participation in export trading companies—as well as the forms that such participation may take—remain uncertain at present, section 105 of the bill sets certain limitations on the level of involvement permitted banking organizations that invest in or finance these companies. S. 734 allows banking organizations to invest up to $10 million in one or more export trading companies without prior regulatory agency approval, as long as that investment does not amount to control. Investments in excess of $10 million, or any investment or action which amounts to control of an export trading company, must be approved by the appropriate Federal banking agency. The bill sets an overall limit on a bank's involvement by prohibiting its direct and indirect investments in the ownership of one or more export trading companies from exceeding 5 percent of the bank's capital and surplus. Total investment by a banking organization, combined with extensions of credit to export trading companies, cannot exceed 10 percent of the bank's capital and surplus.

Some have argued that these restrictions do not go far enough: that banks should not be allowed to gain control of an export trading company, because that would represent a substantial departure from the long-established separation of banking and commerce in our economic system. They fear that the public's deposits may become exposed to undue risk if banks acquire ownership control of trading companies.

Legitimate questions concerning the scope of bank participation do merit careful consideration. It is time that banks, given their international offices, experience in trade financing and familiarity with domestic U.S. producers, will be likely sources of leadership in forming export trading companies. But I feel that S. 734 includes important safeguards which not only protect against unsound banking practices, but also against any unfair competitive advantages that might otherwise accrue to an export trading company having a bank investor.

A specific provision of the bill, for example, prohibits banks from extending credit on a preferential basis to an export trading company in which it has an equity interest. This subsection meets a traditional concern of U.S. policy that banks not favor their affiliates in loan transactions. But even without the inclusion of this provision, the Financial Institutions Regulatory and Interest Rate Control Act of 1978 already provides safeguards against such unfair lending practices by banking institutions. Similarly, the 5-percent limit placed on total equity investments, and the 10-percent limit placed on a bank's total investments in or financing of trading companies, protect banking organizations from overexposure.

I see no harm in allowing a bank to own a trading company as long as such limitations exist. In fact, permitting banks to have equity and management control over their affiliate relationships seems far wiser than mandating the bank capital be controlled solely by the decisions of nonbanking partners. Banking organizations will surely be more inclined to form export trading companies if they can control their investments. Such investments, in turn, will provide banks with a long-term incentive to establish the additional framework needed to offer a complete range of export services.

S. 734 also stipulates that any bank's proposed or existing investment in trading companies may be terminated by the appropriate Federal regulatory agency upon its determination that the ownership or control of any such investment constitutes a serious risk to the financial safety, soundness, or stability of that bank. I believe that these limitations, coupled with the banking agencies' broad regulatory, supervisory, and examination powers and other existing legal restrictions, assure that there will be no serious risk to the safety and soundness of bank participation in export trading companies.

The access to capital and international

markets provided by title I of S. 734 is a necessary, but not a sufficient, step in facilitating the formation of American trading companies. It is not sufficient because American firms have long been unwilling to risk investments in export activities, given the uncertain climate created by domestic antitrust rulings. So unless we are willing to clarify how our antitrust laws related to export trade, we cannot hope to utilize the full resources of the American business community in our effort to regain a competitive position in international trade.

On this last point, our competitiveness has deteriorated precisely because we have failed to develop a foreign trade policy consistent with changing international realities. Whereas private, multinational firms seeking the most efficient production and distribution of goods and services once dominated world markets, economic nationalism now prevails. In the critical areas of oil, steel, and autos, Government owned or directed, vertically integrated corporations shape the flow of trade. They do so as instruments of national governments and their actions are directed by political, rather than economic, consideration.

The postwar challenge America issued to her trading partners was not met by a purely American response. Industrial development programs in Italy, France, Great Britain, Japan, and the developing nations are hybrids of the American model and their implementation has altered the evolution of world trade. Although I do not advocate the adoption of these nationalistic, economic policies here in the United States, neither do I believe we can shape a coherent, effective foreign economic policy without recognizing the unsettling effects of those policies on world trade and American industries.

Through the Marshall Plan and other development assistance programs, the United States helped Europe, Japan and the developing nations establish their industrial strength. We generously stood back while they nurtured their industries with financial assistance and protectionism. While we continue to provide the shelter of our defense umbrella, they continue along the path of independence and economic nationalism. It is time now to adjust our own policies to the new realities of the global market.

One way in which we can do this is by unleashing the full force of America's private enterprise from the restraints of needless and confusing regulation. I believe that this bill's clarification of long-standing ambiguities in the area of antitrust exemptions for export trading companies is a long overdue step in this direction. Title II of S. 734 encourages the formation of export trading companies by expanding the provisions of the Webb-Pomerene Act to include trade in services, as well as that in good, wares or merchandise. This feature will greatly expand export opportunities for trading companies in areas where American companies are especially competitive. Furthermore, title II establishes a clearance procedure whereby firms can determine in advance whether their export activities are immune from antitrust suits. By establishing a certification procedure and codifying the enforcement intentions of our Government's antitrust oversight branches, title II of S. 734 eliminates some of the uncertainties in current law that have discouraged the formation of American consortia to bid on significant export projects. At the same time, however, S. 734 also protects against any anticompetitive effects that might result from the establishment and operation of export trading companies.

Mr. President, this bill will not, by itself, solve America's foreign trade problems. Restoring the international competitiveness of the American enterprise will require us to do much more in the areas of capital formation, regulatory reform and research and development. But because S. 734 recognizes that cooperation between business and Government is a critical ingredient in any comprehensive national effort to improve our export performance, I believe it is an important step in the right direction.●

● Mr. DODD. Mr. President, I rise in support of S. 734, the Export Trading Company Act. It is clear that increased export activity must constitute a major component of any economic recovery program. This legislation will facilitate access to foreign markets by many businesses, particularly smaller businesses, who, because of inadequate capital or marketing expertise, have not enjoyed such access.

Last year, the White House Commission on Small Business pointed out that small businesses produce, investment dollar for investment dollar, 24 times as many innovations as big business, and create over 85 percent of new jobs nationwide. In today's global economy, increasingly dominated by sophisticated, innovative, high-technology goods and services, it should be clear that smaller businesses should be in the forefront of American attempts to more effectively penetrate world markets. Smaller businesses can thus augment activities by larger businesses, which have for some time exported computers, heavy machinery, chemicals, aerospace technology, power-generating machinery, and telecommunications equipment and services.

During the recent past, fewer than 1 out of 10 U.S. manufacturing firms export, and the major share of the export market is dominated by large corporations. S. 734, if enacted, would promote the establishment of export trading companies and thus would overcome some of the most basic, yet significant, obstacles to exporting by small business.

Under title I, export trading companies would benefit from increased financial leverage provided through Federal loans and loan guarantees. The Secretary of Commerce would provide information about export trading companies to export-minded U.S. businesses. And banks would be permitted to invest in export trading companies under strict limitations designed to insure the safety and soundness of participating banks. Bank investments of over $10 million would be subject to prior approval of Federal regulatory agencies and bank investments exceeding 5 percent of bank capital would be prohibited outright.

Uncertainty over constraints posed by antitrust laws has been a significant factor inhibiting the formation of export trading companies. Title II of this legislation would clarify antitrust provisions of the 1918 Webb-Pomerene Act and provide procedures through which specified export trade activities would be granted antitrust clearance by the Department of Commerce. To eliminate confusion regarding the status of present Webb-Pomerene associations, this bill "grandfathers" such existing associations so they can continue operations unimpeded and free of uncertainty under this act.

Export trading companies would help smaller businesses pool the costs and risks associated with participation in foreign markets. Services provided by export trading companies might include market research, transportation, warehousing, and aftersales servicing, as well as trade financing. One can look to Japan for an example of the success of trading companies. Japanese trading companies account for over 50 percent of that country's total trade, which involves thousands of products worldwide.

Even though there are many differences between Japanese and American business policies which preclude point-by-point emulation, it still seems clear that great potential exists in a close relationship between trading companies and U.S. manufacturers which produce new and innovative products.

Mr. President, the state of our economy and of our Nation demands that we take strong action to improve our competitiveness in world markets. We must take steps to improve productivity and reduce inflation here at home. However, even if we perform adequately in this regard, we will still face intense and growing competition from foreign industry, much of which enjoys the benefits offered by trading companies, as well as active government support in the form of generous subsidies and credit. This legislation will provide a significant additional step toward enhancing the ability of our businesses to compete, on similar terms, with aggressive industries abroad. Therefore, I urge the Senate today to act favorably on this legislation, as it did last year by a vote of 77 to 0.●

ADVANCING OUR GROWTH OBJECTIVES IN WORLD MARKETS

● Mr. BRADLEY. Mr. President, the Senate recently completed work on a reconciliation resolution to reduce drastically Federal spending levels for fiscal year 1981 and spending targets for fiscal years 1982 and 1983. The cuts, many of which will bore deeply into important social programs, were justified by a desire to restore growth to the private sector of the economy. They were made on the expectation that reducing the Federal presence in the economy will make room for more rapid economic expansion in the private sector and that this growth in turn ultimately will provide more benefits to all Americans.

Mr. President, although I differ with the President on spending priorities and have serious doubts about the economic theory underlying his revival program, I wholeheartedly agree that restoring

robust economic growth must be an American priority. But for us to win the battle for growth it must take place on two fronts—restoring confidence and investment levels within our economy domestically and advancing our position in markets internationally.

The budget, and fiscal policy generally, primarily is a force on the domestic economy. Export trading companies, the subject of the legislation before us today, are a potential force to advance our growth objectives in the international economy.

Mr. President, the world has changed and influences on the U.S. economy have changed. Trade activity is no longer marginal. Rather it is the most dynamic element. Twenty years ago exports and imports combined amounted to some 10 percent of U.S. gross national product. Today the combined figure is close to 25 percent.

During the coming years, much of the stimulus to U.S. growth will have to come from foreign demand, particularly from the developing world. Even under the roslest assumptions about domestic economic growth rate, we are not likely to keep pace with the developing world, and certainly not with newly industrializing countries—the Taiwans, Brazils, and South Koreas of the world. While during the seventies the older industrialized nations of the world grew at an average 3.4 percent, the developing world on a whole clipped along at a pace of 5.7 percent, and the newly industrialized countries boasted even higher average growth rates.

Of course, these growth rates in the developing world as a whole were on a much lower base and the distribution of growth was very uneven, with some of the poorest countries experiencing negative rates. But past statistics and future projections point to development activity outside our borders as the dynamic factor in world economic expansion. Developing markets have become increasingly important for U.S. expansion and will certainly become even more important in the future. Just last year, countries of the developing world took nearly 40 percent of U.S. exports, more than was taken by the European community and Japan combined.

Trade has become a major influence in U.S. economic life, but we have done little as a nation to improve our trade performance, little to reap the full benefits of trade. Our trade competitors in Western Europe and Japan have not been so negligent.

They have made trade a centerpiece of their growth strategies, stressing the long-term returns of gaining a foothold in new and developing markets. Their government officials have been energetic export promoters in foreign lands. Their official export credit agencies have made export financing and insurance available on generous terms and for a broad range of purposes, and their laws and policies have encouraged, not discouraged, the coordination of business and financial activities for exporting purposes.

Export trading companies particularly have made a major contribution to Japan's trade performance. We are all fully aware of how impressive that performance has been. Export trading companies account for over 50 percent of total trade by Japan today.

Mr. President, S. 734 offers our Nation an opportunity to mobilize for trade, to strengthen our areas of comparative advantage and to take advantage of the widening opportunities in the world.

Mr. President, the future of our economy depends on our success in world markets—the stake is no less critical than that. The Government can seek to reduce barriers to competitive performance by U.S. companies, but ultimately the fate of the U.S. economy lies with the private sector.

The Export Trading Companies Act is a measure that relies on private sector initiative. It does not ask Government to take over a business function, it removes barriers that impede U.S. business from mobilizing to function more effectively.

It is particularly suited to mobilize the untapped resources of small business in America. Only some 10 percent of the 250,000 to 300,000 manufacturing firms in the United States do any exporting. Some 75 percent of these 250,000 to 300,000 firms are small- or medium-sized businesses, but firms of this size account for only 10 to 15 percent of U.S. exports. Indeed 85 percent of all exports are sold by a mere 1,000 to 2,000 firms and about 100 firms account for 50 percent of exports. Most of these are large firms. The Department of Commerce estimates that an additional 20,000 firms who do not export at all could do so.

Small businesses are beginning to see over the horizon of our borders to the wealth of growth opportunity abroad. But the view is still murky, and therefore uninviting.

For small businesses, the uncertainties of export transactions can preclude investment in exporting. It simply is too risky to invest time and money in acquiring market information, locating potential buyers, and arranging for financing warehousing, insurance, transportation, and distribution, even though the final returns may well prove worth it. It does not serve anyone's interest to permit potential profitable business to stagnate for lack of information and centralized services.

The export trading companies bill offers a way out of this stagnation. It is such a sensible approach that one is astonished that it has not been enacted to date.

The bill is designed to promote exports by encouraging the formation of export trading companies or associations. Its major achievement is to permit these trading groups to offer a range of export services including banking services, at "one-stop".

By permitting the participation of banks in such companies, the legislation helps potential exporters overcome two of the greatest barriers to export—obtaining information and business contacts in world markets and obtaining adequate capital. Banks can bring to trading companies resources that are essential to their success, including expertise in international transactions, such as currency exchange and letters of credit, international bank and correspondent banks relationships, knowledge of potential customers, experience in managing investment risk decisions, and capital to start up a trading company and finance its transactions.

The integrity of our Nation's banking system is duly protected by an array of conditions placed on the terms of bank participation. For example, the appropriate banking agency must approve bank investments in trading companies in excess of $10 million and investments that give a bank control of or more than 50 percent of the assets of a trading company. Further, the agency can disapprove or place conditions on bank investment or activity in a trading company, and participating banks are barred from offering preferential terms to affiliated trading companies.

A second major achievement of this bill is the creation of a certification process that reduces the uncertainty of potential participants in export trading associations as to the liability of such companies to antitrust prosecution. Unpredictable antitrust liability has been a cloud over the formation of trading companies, despite the explicit exemption under a 1918 law of export promoting activities, under certain conditions, from U.S. antitrust laws.

Since 1918 it has been U.S. policy to exclude from antitrust prosecution export-promoting activities that do not restrain trade in the U.S. market. But this has not been U.S. practice. This is because business cannot know in advance whether courts will construe certain cooperative activities as exempt from antitrust prosecution under the 1918 law. This uncertainty has a chilling effect on potential participants in an export trading association.

The export trading companies bill creates a certification process that balances the exporter's need for a more productable legal environment against society's interest in a competitive U.S. economy. The certification process enables trading companies to organize effectively for export promotion without undermining the purposes of the Sherman and Clayton Acts.

Essentially, trading companies can obtain prior assurance against antitrust prosecution by presenting the Department of Commerce with an application detailing its proposed activities. Commerce then consults with the Department of Justice and the Federal Trade Commission to determine whether these activities will promote exports and not result in a substantial lessening of competition, or in the use of unfair methods of competition against other U.S. exporters. A positive determination would exempt the applicant from antitrust prosecution for only those activities specified in the application.

Safeguards assure that the exemption will not impair competition in U.S. markets or extend beyond the bounds of the certifications as approved. For example, the Department of Justice or the FTC can seek injunctive relief to prevent certification from taking effect, and can initiate decertification of a trading company in Federal court.

Mr. President, the export trading companies bill has been the subject of close and careful scrutiny. It has been examined piecemeal in numerous congressional hearings, undergone review by two administrations and been the subject of vigorous Senate debate. It ultimately has won support in all these forums.

Mr. President, the refined product of all these labors is before us today. It is the product of expertise, balance, deliberation, and healthy compromise. It is a worthy product, and I am proud, as one of its early supporters, to urge its enactment.●

● Mr. WEICKER. Mr. President, I rise in support of S. 734, the Export Trading Company Act of 1981. As a cosponsor of this legislation and its predecessor in the 96th Congress, I am particularly supportive of the role this legislation will play in increasing exports by small- and medium-sized firms.

Mr. President, small businesses which desire to export are often stymied by the tremendously burdensome requirements of such an effort. Gaining an expertise in foreign markets, tax provisions, freight handling, and business customs requires an indepth study and is tremendously time consuming. A small business cannot afford the large in-house international marketing staff which would be required to handle all aspects of a successful export effort.

Heretofore, Government export promotion programs have not been successful in filling this informational gap or in providing the type or level of assistance necessary to aid small business exporters. Export associations and trading companies currently in existence, while providing an alternative to direct exporting by small business, have been harvesting by certain legal restrictions and ambiguities.

S. 734 seeks to address many of these problems which have restricted successful operation of export trading companies and associations and in so doing, increase exporting by small- and medium-sized businesses.

Of course, Mr. President, a major problem facing small business is access to capital. This problem is even more acute when a small business attempts to export. By providing, under carefully monitored circumstances, for bank ownership of export trading companies, this legislation seeks to address this critical capital problem.

Mr. President, the White House Conference on Small Business, held in January 1980, examined the area of small business involvement in international trade. The conference endorsed five recommendations to improve the atmosphere necessary for successful exporting by small business. The recommendation receiving the broadest support included an endorsement of the development of export trading companies with greater powers and authority. This Congress has repeatedly expressed its support for the recommendations of the White House Conference on Small Business. Passage of the pending measure will be one more step toward fulfillment of the conference agenda.

Mr. President, I urge my colleagues to support this important legislation.●

Mr. CHAFEE. Mr. President, the purpose of the bill before us today is to promote the formation of export trading companies and trade associations. I totally support that goal. This bill, S. 144, directs the Secretary of Commerce to promote export trading companies by providing information and advice to individuals and by bringing together the producers of goods and services with firms experienced in export trade. It permits banks to make limited investment in export trading companies. It also clarifies the antitrust provisions applicable to export trade associations and trading companies and provides a certification procedure that will enable them to obtain antitrust preclearance for their export trade operations.

When I look at my home State, I see that 90 percent of Rhode Island's companies are small. If Rhode Island is going to increase jobs and stimulate the economy through exporting, then small companies must participate.

Having sponsored an export opportunities conference for firms in Rhode Island, I learned that many companies do not export because they have neither the funds to invest in market development overseas, nor the time or personnel to master customs documents, shipping, packaging, regulations on sales agents, and the many details involved in selling goods and services overseas. Such companies need far more than a 1-day conference, or a Government brochure. They need someone to market their products for them; a way to spread the risks and costs among many firms, which they cannot afford on an individual basis.

At present, four small- or medium-sized firms in Rhode Island belong to joint export associations. But the difficulty in securing adeaquate financing, and uncertainty over antitrust exemptions has prevented these trading companies from reaching more than a small fraction of U.S. firms which could export. In addition, the banks in Rhode Island are small to medium sized. There are no Chase Manhattans in Rhode Island. I have talked with companies who belong to joint export associations which are operating under current law. I have talked with Rhode Island bankers. They would like the opportunity to work together to promote Rhode Island exports. The legislation before us today would give them that chance.

Mr. President, every other major trading nation not only permits but encourages the formation of export trading companies or their equivalent. Only the United States has failed to allow the development of this vehicle for aiding smaller firms who either cannot or will not enter the world marketplace on their own.

I have heard a good deal of talk lately about the trading power of the Japanese and our need to compete with them more effectively. Two-thirds of Japanese exports are handled by trading companies. In the U.S., experts believe that less than 10 percent of our exports make use of joint marketing methods. How can we expect U.S. firms to compete when we deny them what has been the most effective weapon in the Japanese trade arsenal? As Senator HEINZ has pointed out, the sixth largest U.S. exporter is Mitsui, a Japanese trading company.

We must recognize the reality of what we face ahead in the world trade arena. There is increasing competition for slices of the world trade pie. Yet, world trade volume has leveled off considerably, increasing by only 1 percent in 1980. The share of manufactured goods exported by the industrialized nations is only two-thirds of what it was 20 years ago.

In as much as the markets of the industrialized world are relatively mature, the greatest potential for growth lies in the less developed countries. But, these nations have the least developed commercial channels. Trying to enter their markets can be a complex and frustrating experience, particularly for smaller companies trying to export on their own. If U.S. companies are going to share in the growth of these markets, thus increasing exports, creating jobs, and strengthening our economy, then they must have the tools provided in the legislation before us today.

Finally, Mr. President, I would like to point out that we are not asking the Government to give anything to U.S. companies. We are only asking that it not hinder U.S. companies' ability to compete overseas. The administration has urged the Congress to pass this legislation quickly. The time has come to do just that.

The PRESIDING OFFICER. The bill is open to further amendment.

If there be no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered.

Mr. BAKER. Mr. President, before the rollcall begins, there will be no more rollcall votes today.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Minnesota (Mr. DURENBERGER) and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. DURENBERGER) would vote "Yea."

Mr. CRANSTON. I announce that the Senator from Illinois (Mr. DIXON), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Kentucky, (Mr. HUDDLESTON), and the Senator from Louisiana (Mr. LONG) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. BRADLEY) is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 83 Leg.]

YEAS—93

Abdnor	Glenn	Moynihan
Andrews	Goldwater	Murkowski
Armstrong	Gorton	Nickles
Baker	Grassley	Nunn
Baucus	Hart	Pell
Bentsen	Hatch	Percy
Biden	Hatfield	Pressler
Boren	Hawkins	Proxmire
Boschwitz	Hayakawa	Pryor
Bumpers	Heflin	Quayle
Burdick	Heinz	Randolph
Byrd, Harry F., Jr.	Helms	Riegle
Byrd, Robert C.	Hollings	Roth
Cannon	Humphrey	Rudman
Chafee	Inouye	Sarbanes
Chiles	Jackson	Sasser
Cochran	Jepsen	Schmitt
Cohen	Johnston	Simpson
Cranston	Kassebaum	Specter
D'Amato	Kasten	Stafford
Danforth	Kennedy	Stennis
DeConcini	Laxalt	Stevens
Denton	Leahy	Symms
Dodd	Levin	Thurmond
Dole	Lugar	Tower
Domenici	Mathias	Tsongas
Eagleton	Matsunaga	Wallop
East	Mattingly	Warner
Exon	McClure	Weicker
Ford	Melcher	Zorinsky
Garn	Metzenbaum	
	Mitchell	

NOT VOTING—7

Bradley	Huddleston	Williams
Dixon	Long	
Durenberger	Packwood	

So the bill (S. 734), as amended, was passed as follows:

S. 734

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXPORT TRADING COMPANIES

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1981".

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

(2) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

(4) export trade intermediaries, such as trading companies, can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per-unit cost to producers;

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant portion of potential United States exporters);

(6) State and local government activities which initiate, facilitate, or expand export of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(7) the development of export trading companies in the United States has been hampered by insular business attitudes and by Government regulations; and

(8) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services, particularly by small, medium-size, and minority concerns, by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods produced in the United States or services produced in the United States, and exported, or in the course of being exported, from the United States to any foreign nation;

(2) the term "goods produced in the United States" means tangible property manufactured, produced, grown, or extracted in the United States, the cost of the imported raw materials and components thereof shall not exceed 50 per centum of the sales price;

(3) the term "services produced in the United States" includes, but is not limited to, accounting amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services, not less than 50 per centum of the sales or billings of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(5) the term "export trading company" means a company, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for the purposes of—

(A) exporting goods or services produced in the United States; and

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(7) the term "Secretary" means the Secretary of Commerce; and

(8) the term "company" means any corporation, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization.

(b) The Secretary is authorized, by regulation, to further define such terms consistent with this section.

FUNCTIONS OF THE SECRETARY OF COMMERCE

SEC. 104. The Secretary shall promote and encourage the formation and operation of export trading companies by providing information and advice to interested persons and by facilitating contact between producers of exportable goods and services and firms offering export trade services.

OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS, BANK HOLDING COMPANIES, AND INTERNATIONAL BANKING CORPORATIONS

SEC. 105. (a) For the purpose of this section—

(1) the term "banking organization" means any State bank, national bank, Federal savings bank, bankers' bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(2) the term "State bank" means any bank or bankers' bank which is incorporated under the laws of any State, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands;

(3) the term "State member bank" means any State bank which is a member of the Federal Reserve System;

(4) the term "State nonmember insured bank" means any State bank which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(5) the term "bankers' bank" means any bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks (except to the extent directors' qualifying shares are required by law) and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors, or employees;

(6) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(7) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(8) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(9) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank or any bank located in the District of Columbia;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank; and

(D) the Federal Home Loan Bank Board with respect to a Federal savings bank.

In any situation where the banking organization holding or making an investment in an export trading company is a subsidiary of another banking organization which is subject to the jurisdiction of another agency, and some form of agency approval or notification is required, such approval or notification need only be obtained from or made to, as the case may be, the appropriate Federal banking agency for the banking organization making or holding the investment in the export trading company;

(10) the term "capital and surplus" shall be defined by the appropriate Federal banking agency;

(11) an "affiliate" of a banking organization has the same meaning as an "affiliate" of a member bank under section 2 of the Banking Act of 1933, and, with respect to a bank holding company, includes any bank or other subsidiary of such company, the term "subsidiary" has the same meaning as in section 2 of the Bank Holding Company Act of 1956;

(12) the terms "control" and "subsidiary" shall have the same meanings assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as

vided in section 2(a)(2) of the Bank Holding Company Act of 1956, except that for purpose of the Export Trading Company Act of 1981, the determination of control as provided in section 2(a)(2) of the Bank Holding Company Act of 1956 shall be made by the appropriate Federal banking agency; and

(13) for the purposes of this section, the term "export trading company" means a company which does business under the laws of the United States or any State and which is exclusively engaged in activities related to international trade, whether operated for profit or as a nonprofit organization: *Provided, however,* That any such company must also either meet the definition of export trading company in section 103(a)(5) of this Act, or be organized and operated principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this Act: *Provided further,* That any such company, for purposes of this section, (A) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that its banking organization investor may do so under applicable Federal and State banking law and regulations, and (B) may not engage in manufacturing or agricultural production activities.

(b)(1) Notwithstanding any prohibition, restriction, limitation, condition, or requirement of any law applicable only to banking organizations, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency, if such investment does not cause an export trading company to become a subsidiary of the investing banking organization; and

(B) make investments in excess of an aggregate amount of $10,000,000 in one or more export trading companies, or make any investment or take any other action which causes an export trading company to become a subsidiary of the investing banking organization or which will cause more than 50 per centum of the voting stock of an export trading company to be owned or controlled by banking organizations, only with the prior approval of the appropriate Federal banking agency.

Any banking organization which makes an investment under authority of clause (A) of the preceding sentence shall promptly notify the appropriate Federal banking agency of such investment and shall file such reports on such investment as such agency may require. If, after receipt of any such notification, the appropriate Federal banking agency determines that export trading company is a subsidiary of the investing banking organization, it shall have authority to disapprove the investment or impose conditions on such investment under authority of subsection (d). In furtherance of such authority, the appropriate Federal banking agency, after notice and opportunity for hearing, may require divestiture of any voting stock or other evidences of ownership previously acquired, and may impose conditions necessary for the termination of any controlling relationship.

(2) If a banking organization proposes to make any investment or engage in any activity included within the following two subparagraphs, it must give the appropriate Federal banking agency ninety days prior written notice before it makes such investment or engages in such activity.

(A) any additional investment in an export trading company subsidiary; or

(B) the engagement by any export trading company subsidiary in any line of activity, including specifically the taking of title to goods, wares, merchandise, or commodities, if such activity was not disclosed in any prior application for approval.

During the notification period provided under this paragraph, the appropriate Federal banking agency may, by written notice, disapprove the proposed investment or activity or impose conditions on such investment or activity under authority of subsection (d). An additional investment or activity covered by this paragraph may be made or engaged in, as the case may be, prior to the expiration of the notification period if the appropriate Federal banking agency issues written notice of its intent not to disapprove.

(3) In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1)(B) of this subsection within a period of one hundred and twenty days, which period begins on the date the application has been accepted for processing by the appropriate Federal banking agency, the application shall be deemed to have been granted. In the event of the failure of the appropriate Federal banking agency either to disapprove or to impose conditions on any investment or activity subject to the prior noufication requirements of paragraph (2) of this subsection within the ninety-day period provided therein, such period beginning on the date the notification has been received by the appropriate Federal banking agency, such investment or activity may be made or engaged in, as the case may be, any time after the expiration of such period.

(c) The following limitations apply to export trading companies and the investments in such companies by banking organizations:

(1) The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership except where a majority of the outstanding voting stock or other evidences of ownership of the company is owned or controlled by such banking organization.

(2) The total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of credit by the banking organization and its direct and indirect subsidiaries to such export trading company shall not exceed 10 per centum of the banking organization's capital and surplus.

(3) A banking organization that owns any voting stock or other evidences of ownership of an export trading company may be required, by the appropriate Federal banking agency, to terminate its ownership or shall be subject to limitations or conditions which may be imposed by such agency, if the agency determines that the company has taken positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of its business operations.

(4) No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(d)(1) In the case of every application under subsection (b)(1)(B) of this section, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns (with special emphasis on small, medium-size, and minority concerns), and to improving United States competitiveness in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under subsection (b)(1)(B) if it finds that the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(2) In approving any application submitted under subsection (b)(1)(B), the appropriate Federal banking agency may impose such conditions which, under the circumstances of such case, it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices. With respect to the taking of title to goods, wares, merchandise, or commodities by any export trading company subsidiary of a banking organization, the appropriate Federal banking agencies may, by order, regulation, or guidelines, establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. In particular, the appropriate Federal banking agencies may establish inventory-to-capital ratios, based on the capital of the export trading company subsidiary, for those circumstances in which the export trading company subsidiary may bear a market risk on inventory held.

(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal Banking agency must give due consideration to the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company, and the identity, character, and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions or set standards for the taking of title which unnecessarily disadvantage, restrict, or limit export trading companies in competing in world markets or in achieving the purposes of section 102 of this Act. In particular, in setting standards for the taking of title under the preceding paragraph (2), the appropriate Federal banking agencies shall give special weight to the need to take title in certain kinds of trade transactions, such as international barter transactions.

(4) Notwithstanding any other provision of this Act, the appropriate Federal banking agency may, whenever it has reasonable cause to believe that the ownership or control of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the banking organization, after due notice and opportunity for hearing, to terminate (within one hundred and twenty days or such longer period as the appropriate Federal banking agency may direct in unusual circumstances) its investment in the export trading company.

(5) On or before two years after enactment of this Act, the appropriate Federal

banking agencies shall jointly report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives their recommendations with respect to the implementation of this section, their recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-size, and minority business concerns, and their recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

(6) The appropriate Federal banking agency may, by regulation or order, exempt from the collateral requirements of section 23A of the Federal Reserve Act any loan or extension of credit made by a national or State bank to an export trading company affiliate if the agency determines such exemption is necessary to finance the operating expenses of an affiliated export trading company and does not expose the bank to undue financial risks. This paragraph does not apply to bank affiliates currently exempt from the requirements of section 23A.

(e)(1) Any party aggrieved by an order of an appropriate Federal banking agency under this section may obtain a review of such order in the United States court of appeals within any circuit wherein such organization has its principal place of business, or in the court of appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the order was based. The court shall set aside any order found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (D) without observance of procedure required by law.

(2) Except for violations of subsection (b)(3) of this section, the court shall remand for further consideration by the appropriate Federal banking agency any order set aside solely for procedural errors and may remand for further consideration by the appropriate Federal banking agency any order set aside for substantive errors. Upon remand, the appropriate Federal banking agency shall have no more than sixty days from date of issuance of the court's order to cure any procedural error or reconsider its prior order. If the agency fails to act within this period, the application or other matter subject to review shall be deemed to have been granted as a matter of law.

(f)(1) The appropriate Federal banking agencies are authorized and empowered to issue such rules, regulations, and orders, to require such reports, to delegate such functions, and to conduct such examinations of subsidiary export trading companies, as each of them may deem necessary in order to perform their respective duties and functions under this section and to administer and carry out the provisions and purposes of this section and prevent evasions thereof.

(2) In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this section may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency defined in that Act.

(g) Nothing in this section shall at any time prevent any State from adopting a law prohibiting banks chartered under the laws of such State from investing in export trading companies or applying conditions, limitations, or restrictions on investments by banks chartered under the laws of such State in export trading companies in addition to any conditions, limitations, or restrictions provided under this section.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 106. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other private creditors to export trading companies as defined in section 103(5) of this Act, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

TITLE II—EXPORT TRADE ASSOCIATIONS

SHORT TITLE

SEC. 201. This title may be cited as the "Export Trade Association Act of 1981".

FINDINGS; DECLARATION OF PURPOSE

SEC. 202. (a) FINDINGS.—The Congress finds and declares that—

(1) the exports of the American economy are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating $1 out of every $7 of total United States goods produced;

(2) exports will play an even larger role in the United States economy in the future in the face of severe competition from foreign government-owned and subsidized commercial entities;

(3) between 1968 and 1977 the United States share of total world exports fell from 19 per centum to 13 per centum;

(4) trade deficits contribute to the decline of the dollar on international currency markets, fueling inflation at home;

(5) service-related industries are vital to the well-being of the American economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and represent a small but rapidly rising percentage of United States international trade;

(6) agriculture constitutes the foundation of the economy of the United States and will continue to be a leading sector in United States export growth;

(7) small- and medium-sized firms are prime beneficiaries of joint exporting, through pooling of technical expertise, help in achieving economies of scale, and assistance in competing effectively in foreign markets; and

(8) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports.

(b) PURPOSE.—It is the purpose of this title to encourage American exports by directing the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

DEFINITIONS

SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–68) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

"SECTION 1. DEFINITIONS.

As used in this Act—

"(1) EXPORT TRADE.—The term 'export trade' means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported from the United States or any territory thereof to any foreign nation.

(2) SERVICE.—The term 'service' means intangible economic output, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, informational and any other data-based services, and communication services.

"(3) EXPORT TRADE ACTIVITIES.—The term 'export trade activities' means activities or agreements in the course of export trade.

"(4) METHODS OF OPERATION.—The term 'methods of operation' means the methods by which an association or export trading company conducts or proposes to conduct export trade.

"(5) TRADE WITHIN THE UNITED STATES.—The term 'trade within the United States' whenever used in this Act means trade or commerce among the several States or in any territory of the United States, or in the District of Columbia, or between any such territory and another, or between any such territory or territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"(6) ASSOCIATION.—The term 'association' means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations, whether operated for profit or organized as nonprofit corporations, which are created under and exist pursuant to the laws of any State or of the United States.

"(7) EXPORT TRADING COMPANY.—The term 'export trading company' means an export trading company as defined in section 103(5) of the Export Trading Company Act of 1981.

"(8) ANTITRUST LAWS.—The term 'antitrust laws' means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12), sections 5 and 6 of the Federal Trade Commission Act (15 U.S.C. 45, 46), and any State antitrust or unfair competition law.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(10) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(11) COMMISSION.—The term 'Commission' means the Federal Trade Commission.".

ANTITRUST EXEMPTION

SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–68) is amended by striking out section 2 (15 U.S.C. 62) and inserting in lieu thereof the following:

"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

"(a) ELIGIBILITY.—The export trade, export trade activities, and methods of operation of any association, entered into for the sole purpose of engaging in export trade, and engaged in or proposed to be engaged in such export trade, and the export trade, export trade activities and methods of operation of any export trading company, that—

"(1) serve to preserve or promote export trade;

"(2) result in neither a substantial lessen-

ing of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association or export trading company;

"(3) do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(4) do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(5) do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members; and

"(6) do not constitute trade or commerce in the licensing of patents, technology, trademarks, or know-how, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or export trading company or its members

shall, when certified according to the procedures set forth in this Act, be eligible for the exemption provided in subsection (b).

"(b) EXEMPTION.—An association or an export trading company and its members are exempt from the operation of the antitrust laws with respect to their export trade, export trade activities and methods of operation that are specified in a certificate issued according to the procedures set forth in this Act, carried out in conformity with the provisions, terms, and conditions prescribed in such certificate and engaged in during the period in which such certificate is in effect. The subsequent revocation in whole or in part of such certificate shall not render an association or its members or an export trading company or its members, liable under the antitrust laws for such export trade, export trade activities, or methods of operation engaged in during such period.

"(c) DISAGREEMENT OF ATTORNEY GENERAL OR COMMISSION.—Whenever, pursuant to section 4(b)(1) of this Act, the Attorney General or the Commission has formally advised the Secretary of disagreement with his determination to issue a proposed certificate, and the Secretary has nonetheless issued such proposed certificate or an amended certificate, the exemption provided by this section shall not be effective until thirty days after the issuance of such certificate.".

AMENDMENT OF SECTION 3

SEC. 205. The Webb-Pomerene Act (15 U.S.C. 61-65) is amended—

(1) by inserting immediately before section 3 (15 U.S.C. 63) the following:

"SEC. 3. OWNERSHIP INTEREST IN OTHER TRADE ASSOCIATIONS PERMITTED.",

and

(2) by striking out "Sec. 3. That nothing" in section 3 and inserting in lieu thereof "Nothing".

ADMINISTRATION; ENFORCEMENT; REPORTS

SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act (15 U.S.C. 61-65) is amended by striking out sections 4 and 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the following sections:

"SEC. 4. CERTIFICATION.

"(a) PROCEDURE FOR APPLICATION.—Any association or export trading company seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

"(1) The name of the association or export trading company.

"(2) The location of all of the offices or places of business of the association or export trading company in the United States and abroad.

"(3) The names and addresses of all of the officers, stockholders, and members of the association or export trading company.

"(4) A copy of the certificate or articles of incorporation and bylaws, if the association or export trading company is a corporation; or a copy of the articles, partnership, joint venture, or other agreement or contract under which the association or export trading company conducts or proposes to conduct its export trade activities, or contract of association, if the association or export trading company is unincorporated.

"(5) A description of the goods, wares, merchandise, or services which the association or export trading company or their members export or propose to export.

"(6) A description of the domestic and international conditions, circumstances, and factors which show that the association or export trading company and its activities will serve a specified need in promoting the export trade of the described goods, wares, merchandise, or services.

"(7) The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods, wares, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

"(8) The names of all countries where export trade in the described goods, wares, merchandise, or services is conducted or proposed to be conducted by or through the association or export trading company.

"(9) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association or export trading company; the relation of the association or export trading company to other associations, corporations, partnerships, and individuals; and competition or potential competition, and effects of the association or export trading company thereon. The Secretary may request such information as part of an initial application or as a necessary supplement thereto. The Secretary may not request information under this paragraph which is not reasonably available to the person making application or which is not necessary for certification of the prospective association or export trading company.

"(b) ISSUANCE OF CERTIFICATE.—

"(1) NINETY-DAY PERIOD.—The Secretary shall issue a certificate to an association or export trading company within ninety days after receiving the application for certification or necessary supplement thereto if the Secretary, after consultation with the Attorney General and Commission, determines that the association and its export trade, export trade activities and methods of operation, or export trading company, and its export trade, export trade activities and methods of operation meet the requirements of section 2 of this Act and will serve a specified need in promoting the export trade of the goods, wares, merchandise, or services described in the application for certification. The certificate shall specify the permissible export trade, export trade activities and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary deems necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that he proposes to issue. The Attorney General or Commission may, within fifteen days thereafter, give written notice to the Secretary of an intent to offer advice on the determination. The Attorney General or Commission may, after giving such written notice and within forty-five days of the time the Secretary has delivered a copy of a proposed certificate, formally advise the Secretary and the petitioning association or export trading company of disagreement with the Secretary's determination. The Secretary shall not issue any certificate prior to the expiration of such forty-five-day period unless he has (A) received no notice of intent to offer advice by the Attorney General or the Commission within fifteen days after delivering a copy of a proposed certificate, or (B) received any noticed formal advice of disagreement or written confirmation that no formal disagreement will be transmitted from the Attorney General and the Commission. After the forty-five-day period or, if no notice of intent to offer advice has been given, after the fifteen-day period, the Secretary shall either issue the proposed certificate, issue an amended certificate, or deny the application. Upon agreement of the applicant, the Secretary may delay taking action for not more than thirty additional days after the forty-five-day period. Before offering advice on a proposed certification, the Attorney General and Commission shall consult in an effort to avoid, wherever possible, having both agencies offer advice on any application.

"(2) EXPEDITED CERTIFICATION.—In those instance where the temporary nature of the export trade activities, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of the association or export trading company which have a significant impact on its export trade, make the ninety-day period for application approval described in paragraph (1) of this subsection, or an amended application approval as provided in subsection (c) of this section, impractical for the association or export trading company seeking certification, such association or export trading company may request and may receive expedited action on its application for certification.

"(3) AUTOMATIC CERTIFICATION FOR EXISTING ASSOCIATIONS.—Any association registered with the Federal Trade Commission under this Act as of January 19, 1981, may file with the Secretary an application for automatic certification of any export trade, export trade activities, and methods of operation in which it was engaged prior to enactment of the Export Trade Association Act of 1981. Any such application must be filed within one hundred and eighty days after the date of enactment of such Act and shall be acted upon by the Secretary in accordance with the procedures provided by this section. The Secretary shall issue to the association a certificate specifying the permissible export trade, export trade activities, and methods of operation that he determines are shown by the application (including any necessary supplement thereto), on its face, to be eligible for certification under this Act, and including any terms and conditions the Secretary deems necessary to comply with the requirements of section 2(a) of this Act, unless the Secretary possesses information clearly indicating that the requirements of section 2(a) are not met.

"(4) APPEAL OR REDETERMINATION.—If the Secretary determines not to issue a certificate to an association or export trading company which has submitted an application for certification, or for an amendment of a certificate, then he shall—

"(A) notify the association or export trading company of his determination and the reasons for his determination, and

"(B) upon request made by the association or export trading company, afford it an opportunity for reconsideration with respect to that determination.

"(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF CERTIFICATE.—Whenever there is a material change in the membership, export trade activities, or methods of operation of an association or export trading company then it shall report such change to the Secretary and may apply to the Secretary for an amendment of its certificate. Any application for an amendment to a certificate shall set forth the requested amendment of the certificate and the reasons for the requested amendment. Any request for the amendment of a certificate shall be treated in the same manner as an original application for a certificate.

"(d) AMENDMENT OR REVOCATION OF CERTIFICATE BY SECRETARY.—

"(1) The Secretary on his own initiative shall, upon a determination that the export trade, export trade activities or methods of operation of an association or export trading company no longer comply with the requirements of section 2 of this Act, revoke its certificate or make such amendments as may be necessary to comply with the requirements of such section.

"(2) Prior to revoking or amending a certificate, the Secretary shall—

"(A) notify the holder of the certificate in writing of the facts or conduct which may warrant the action, and

"(B) provide the holder of the certificate an opportunity for such hearing as may be appropriate in the circumstances.

"(3) Before revoking or amending a certificate pursuant to this subsection the Secretary may in his discretion provide the holder of the certificate an opportunity to achieve compliance within a reasonable period of time not to exceed ninety days, except that nothing in this paragraph shall affect any action under section 4(e) of this Act.

"(e) ACTION FOR REVOCATION OF CERTIFICATE BY ATTORNEY GENERAL OR COMMISSION.—

"(1) The Attorney General or the Commission may bring an action against an association or export trading company or its members to invalidate, in whole or in part, its certificate on the ground that the export trade, export trade activities or methods of operation of the association or export trading company fail or have failed to meet the requirements of section 2 of this Act. Except in the case of an action brought during the period before an antitrust exemption becomes effective, as provided for in section 2(c), the Attorney General or Commission shall notify any association or export trading company or member thereof, against which it intends to bring an action for revocation, thirty days in advance, as to its intent to file an action under this subsection. The district court shall consider any issues presented in any such action de novo and if it finds that the requirements of section 2 are not met, it shall issue an order revoking the certificate or any other order necessary to effectuate the purposes of this Act and the requirements of section 2.

"(2) Any action brought under this subsection shall be considered an action described in section 1337 of title 28, United States Code. Pending any such action which was brought during the period any exemption is held in abeyance pursuant to section 2(c) of this Act, the court may make such temporary restraining order or prohibition as shall be deemed just in the premises.

"(3) No person other than the Attorney General or Commission shall have standing to bring an action against an association or export trading company or their respective members for failure of the association or export trading company or their respective export trade, export trade activities or methods of operation to meet the eligibility requirements of section 2 of this Act.

"(f) COMPLIANCE WITH OTHER LAWS.—Each association and each export trading company and any subsidiary thereof shall comply with United States export control laws pertaining to the export or transshipment of any goods on the Commodity Control List to controlled countries. Such laws shall be complied with before actual shipment.

"(g) JUDICIAL REVIEW.—Final orders of the Secretary under this section shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code.

"SEC. 5. GUIDELINES.

"(a) INITIAL PROPOSED GUIDELINES.—Within ninety days after the enactment of the Export Trade Association Act of 1981, the Secretary, after consultation with the Attorney General, and the Commission shall publish proposed guidelines for purposes of determining whether export trade, export trade activities and methods of operation of an association or export trading company will meet the requirements of section 2 of this Act.

"(b) PUBLIC COMMENT PERIOD.—Following publication of the proposed guidelines, and any proposed revision of guidelines, interested parties shall have thirty days to comment on the proposed guidelines. The Secretary shall review the comments and, after consultation with the Attorney General, and Commission, publish final guidelines within thirty days after the last day on which comments may be made under the preceding sentence.

"(c) PERIODIC REVISION.—After publication of the final guidelines, the Secretary shall periodically review the guidelines and, after consultation with the Attorney General, and the Commission, propose revisions as needed.

"(d) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—The promulgation of guidelines under this section shall not be considered rulemaking for purposes of subchapter II of chapter 5 of title 5, United States Code, and section 553 of such title shall not apply to their promulgation.

"SEC. 6. ANNUAL REPORTS.

"Every certified association or export trading company shall submit to the Secretary an annual report, in such form and at such time as he may require, which report updated where necessary the information described by section 4(a) of this Act.

"SEC. 7. CONFIDENTIALITY OF APPLICATION AND ANNUAL REPORT INFORMATION.

"(a) GENERAL RULE.—Portions of applications made under section 4, including amendments to such applications, and annual reports made under section 6 that contain trade secrets or confidential business of financial information, the disclosure of which would harm the competitive position of the person submitting such information shall be confidential, and, except as authorized by this section, no officer or employee or former officer or employee of the United States shall disclose any such confidential information obtained by him in any manner in connection with his service as such an officer or employee.

"(b) DISCLOSURE TO ATTORNEY GENERAL OR COMMISSION.—Whenever the Secretary believes that an applicant may be eligible for a *certificate or has issued a certificate to an association or export trading company, he* shall promptly make available all materials *filed by the applicant, association or export* trading company, including applications and *supplements thereto, reports of material* changes, applications for amendments and annual reports, and information derived therefrom, to the Attorney General or Commission, or any employee or officer thereof, for official use in connection with an investigation or judicial or administrative proceeding under this Act or the antitrust laws to which the United States or the Commission is or may be a party. Such information may only be disclosed by the Secretary upon a prior certification that the information will be maintained in confidence and will only be used for such official law enforcement purposes.

"SEC. 8. MODIFICATION OF ASSOCIATION TO COMPLY WITH UNITED STATES OBLIGATIONS.

"At such time as the United States undertakes binding international obligations by treaty or statute, to the extent that the operations of any export trade association or export trading company, certified under this Act, are inconsistent with such international obligations, the Secretary may require the association or export trading company to modify its respective operations, and in so doing afford the association or export trading company a reasonable opportunity to comply therewith, so as to be consistent with such international obligations.

"SEC. 9. REGULATIONS.

"The Secretary, after consultation with the Attorney General and the Commission, shall promulgate such rules and regulations as may be necessary to carry out the *purposes of this Act*

"SEC. 10. TASK FORCE STUDY.

"Seven years after the date of enactment of the Export Trade Association Act of 1981, the President shall appoint, by and with the advice and consent of the Senate, a task force to examine the effect of the operation of this Act on domestic competition and on United States international trade and to recommend either continuation, revision, or termination of the Webb-Pomerene Act. The task force shall have one year to conduct its study and to make its recommendations to the President."

(b) REDESIGNATION OF SECTION 6.—The Act is amended—

(1) by striking out "SEC. 6." in section 6 (15 U.S.C. 66), and

(2) by inserting immediately before such section the following:

"SEC. 11. SHORT TITLE.".

EFFECTIVE DATE WITH REGARD TO EXISTING ASSOCIATIONS

SEC. 207. (a) GENERAL RULE.—The amendments to the Webb-Pomerene Act set forth in sections 203, 204, 205, and 206 of this Act shall become effective with regard to an existing association described in subsection (b) only at such time as the association may elect to be certified pursuant to subsection (c).

(b) ELECTION TO CONTINUE UNDER PRIOR LAW.—Application of the antitrust laws to any association which as of January 1, 1981, had filed with the Commission the information specified under section 5 of the Webb-Pomerene Act as in effect immediately prior to the date of enactment of this Act shall continue to be governed by the standards set forth in that Act, unless such association elects to seek certification under subsection (c).

(c) ELECTION TO APPLY FOR CERTIFICATION.—Any association to which subsection (b) applies may, at any time after the effective date of this Act, file an application for certification with the Secretary containing the information set forth in section 4(a) of the Webb-Pomerene Act, as amended by section 206 of this Act. The Secretary shall consider and act upon such application in the manner provided in section 4(b) of the Webb-Pomerene Act, as amended by section 206 of this Act. The association filing an application pursuant to this subsection shall continue to be subject to subsection (b) of this section until the Secretary issues a certificate and such certificate has been accepted by the association; the association must decide whether or not to accept such certificate no later than thirty days after the Secretary's determination with respect thereto has become final.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill *was passed.*

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER FOR RECESS UNTIL 9:30 A.M. TOMORROW

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. Thursday, April 9, 1981.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ROUTINE MORNING BUSINESS TOMORROW

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate reconvenes tomorrow and following the time allocated to the two leaders under the standing order, there be a period for the transaction of routine morning business, not to exceed 1 hour, with Senators permitted to speak for not more than 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS FROM TOMORROW MORNING UNTIL FRIDAY, APRIL 10, AND FOR ADJOURNMENT FROM FRIDAY UNTIL MONDAY, APRIL 27, 1981

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate completes its business on tomorrow, it stand in recess until 9:30 a.m. on Friday, April 10; that when the Senate recesses on Friday, it stand in adjournment until 12 noon on Monday, April 27, 1981, pursuant to Senate Concurrent Resolution 17.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, is it anticipated that Friday's session will be pro forma only?

Mr. STEVENS. That is the understanding, that Friday's session will be pro forma only. Tomorrow, there will be routine business.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. STEVENS. I am happy to yield.

Mr ROBERT C. BYRD. On tomorrow, will the Senate transact any business or will the session be for the purpose of routine type morning business?

Mr. STEVENS. The Senate will have routine morning business and, subject to normal clearance, will deal with some routine unanimous-consent matters. It is not anticipated that we will take up any controversial matters tomorrow.

Mr. ROBERT C. BYRD. Mr. President, there will be just the introduction of bills, resolutions, speeches, and so forth?

Mr. STEVENS. I do have a unanimous-consent request that the RECORD be left open for bills and reports, but that is my understanding. I do not know whether there will be any other items that might be cleared on the Executive Calendar or come off the regular calendar on the consent basis, but it will be totally on a unanimous-consent basis. Any transaction of such business will be confined to tomorrow and will not be done on Friday.

Mr. ROBERT C. BYRD. Any transaction of such business will be confined to tomorrow and will not be done on Friday?

Mr. STEVENS. There is no intention to conduct any business on Friday except to have the pro forma session in the morning at 9:30.

Mr. ROBERT C. BYRD. I thank the distinguished assistant majority leader.

ORDER FOR RECORD TO BE HELD OPEN ON THURSDAY, APRIL 9 AND FRIDAY, APRIL 10, 1981

Mr. STEVENS. Mr. President, I ask unanimous consent that on Thursday, April 9 and Friday, April 10 the RECORD be open for bills, resolutions, and inserts from 9 a.m. until 3 p.m. and that committees may be authorized to file reports from 9 a.m. until 3 p.m on Thursday and Friday

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER AUTHORIZING THE SECRETARY OF THE SENATE TO RECEIVE MESSAGES DURING ADJOURNMENT

Mr. STEVENS. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until April 27, 1981, the Secretary of the Senate be authorized to receive messages from the President of the United States and the House of Representatives and that they be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER AUTHORIZING THE PRESIDENT OF THE SENATE, THE PRESIDENT PRO TEMPORE, OR THE ACTING PRESIDENT PRO TEMPORE TO SIGN DULY ENROLLED BILLS AND JOINT RESOLUTIONS

Mr. STEVENS. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until April 27, 1981, the President of the Senate, the President pro tempore, or the Acting President pro tempore be authorized to sign duly enrolled bills and joint resolutions.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER AUTHORIZING THE SECRETARY OF THE SENATE TO RECEIVE REPORTS DURING ADJOURNMENT

Mr. STEVENS. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until April 27, 1981, on Thursday, April 16, 1981, and Thursday, April 23, 1981, the Secretary of the Senate be authorized to receive reports from 9 a.m. until 3 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE SENATE TO TAKE CERTAIN ACTION AND FOR RECOGNITION OF CERTAIN SENATORS ON MONDAY, APRIL 27, 1981

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate reconvenes on Monday, April 27, 1981, the reading of the Journal be dispensed with; no resolution come over under the rule; the call of the Calendar be dispensed with; and that following the recognition of the two leaders under the standing order, Mr. BAKER, Mr. STEVENS, Mr. ROBERT C. BYRD, and Mr. CRANSTON be recognized for not to exceed 15 minutes each, upon the conclusion of which, there be a period for the transaction of routine morning business, not to exceed 1 hour with Senators permitted to speak therein for not more than 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE RECOGNITION OF SENATOR HEFLIN ON TOMORROW

Mr. STEVENS. Mr. President, I ask unanimous consent that Senator HEFLIN be granted a 15-minute special order tomorrow following the time set aside under the standing order for the leaders

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate go into executive session to consider all nominations on the Executive Calendar with the exception of the nomination under the ACTION agency and the nomination of John B. Crowell under the Department of Agriculture.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I shall not object, I simply want to be sure that I understood the distinguished acting majority leader correctly.

He is excluding from consideration at this time Mr. John B. Crowell of Oregon to be Assistant Secretary of Agriculture and Mr. Thomas W. Pauken of Texas to be Director of the ACTION agency. Am I correct?

Mr. STEVENS. That is the Senator's understanding.

Mr. ROBERT C. BYRD. I have no objection.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nominations will be stated.

DEPARTMENT OF AGRICULTURE

The legislative clerk read the nomination of Staley Ledwick, of Iowa, to be Under Secretary of Agriculture for International Affairs and Commodity Programs.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

SOME OLD-FASHIONED RESPONSIBILITIES FOR BUSINESS IN AMERICA'S NEW BEGINNING

I regard the installation of a new Administration in Washington as providing a real opportunity for business leadership to demonstrate its capability to help America solve our collective problems. A failure on our part will likely see a prompt return to overdependence on the government sector and continued low regard for the initiative of business leadership.

Many of us in business have been arguing for years that we could help make this economy produce more effectively if Washington would just get off our backs. Now they've called our bluff. So we've got to deliver in terms of both our economic performance and our social responsibilities.

To do so, we'll have to rediscover some old-fashioned virtues—self-restraint, self-denial, and, above all, self-reliance. Today, I'd like to tell you why I think these old-fashioned responsibilities for business must be the foundation of America's new beginning.

Let's start with self-restraint. Business leaders must avoid the temptation to act like just another "special interest" group. . . .

I'm afraid those of us in the business community are especially vulnerable in this regard. Rightly or wrongly, we have felt for a long time that we were on the outside, that the constituencies we serve were slighted both in government and in public opinion.

Now we have an Administration that is clearly more receptive to businessmen's views. We are getting an opportunity to present our ideas and to sell them on their merits, which is really all we can expect. . . .

If we are smart, we won't forget that the term "special interest" once applied almost exclusively to economic interests. The muckrakers at the turn of the century nearly tarnished businessmen forever as the predatory special interest group—those "malefactors of great wealth," in Teddy Roosevelt's memorable words.

The tables have turned. Now it's the critics of business who are often seen as the special interests. The American people have spoken out against them at the polls—as they surely will against businessmen if the public perceives us as acting out of narrow self-interest instead of manifesting a broadly based concern for the national welfare.

If we don't exercise self-restraint and place the common good ahead of our own parochial interests, we will inevitably lose our newfound influence in national affairs—as, indeed, we should.

Closely related to self-restraint is a second heightened responsibility for business under the new Administration—that of self-denial.

The Administration has proposed sweeping measures to cut government spending. In addition, it plans to restructure the tax system to revive the American economy. These measures call for self-denial and sacrifice on the part of all of us. They call for compromise, and that is something I hope we can do with more grace than our society has demonstrated in the past few decades.

Businessmen now have an opportunity to take the lead in forging new economic relationships with government. It's time we stopped complaining and helped develop workable solutions to the problems of our society.

A case in point is cost-benefit analysis. It is not government's primary responsibility to make cost-benefit analysis work. That task rests squarely on our shareholders.

Governmnet and business may never agree totally on regulatory cost-benefit analysis, particularly when powerful third parties such as labor, environmentalists, and consumer advocates are deeply involved. But the analysis is going to require hard, precise and—above all—honest data, and we can help provide these. So it's time for us to make a determined effort to work with government in developing and supplying the information on which reasoned judgments can be made.

There are other areas as well where we have a responsibility to make concessions and to cooperate in achieving common goals. If we want to get rid of some of those unnecessary OSHA programs which we have criticized for so long, then workers and management will have to cooperate in monitoring the workplace more carefully themselves.

If we don't want more states passing laws which severely limit the ability of companies to close unproductive facilities, then businesses must initiate innovative and mutually beneficial arrangements with the communities where their plants are located.

What I am recommending is that business show the way out of our old adversarial relationships toward a new spirit of cooperation and compromise—in which all parties exercise appropriate self-denial.

That brings me to the third, and most important, responsibility for business, in fact, for all of us. That responsibility is self-reliance—an old, familiar word with a fresh, new meaning in the context to today's problems. . . .

I've sat through a good many meetings in the past few years where businessmen heatedly debated the question: "How do we get government out of our affairs?"

The answer, I think, can be summed up in one terse sentence: "Don't give government any excuse for coming in in the first place!"

We must look to ourselves to solve many of our pressing national problems and to make this economy work. If the business community has learned anything from the past 20 years' experience, it is the urgent need for greater attention to product quality and keener sensitivity and responsiveness to emerging social and economic problems. . . .

Some businessmen, perhaps nostalgic for the past, like to think that if only we could rely exclusively on the profit-and-loss signals of the marketplace, everything would be fine. However appropriate such an outlook may have been for an earlier era, it certainly does not fit with the business imperatives of today.

We cannot survive in the current business environment unless we are sensitive to a broader range of signals: from politics, both domestic and international; from our host communities and our employees; from our churches and schools and other institutions; and, of course, from our own consciences.

Increasingly, the solutions to our social problems and economic weaknesses will involve high technology. . . . Only a self-reliant private sector can develop the high-technology means to lower production costs. And lower costs mean higher productivity. I know we share the conviction that increasing the productivity of American industry is basic to reversing the downward slide of our economy and making it more competitive around the world.

Several factors go into productivity growth, of course—levels of capital investment, allocation of resources, quality of the work force, and others. However, a full 40 percent of the growth of productivity in this country during the past half century came through technological innovation. And that portion is bound to grow as our economy moves more and more away from labor-intensive industry toward high-technology industry. As I see it, this kind of innovation will result in safer workplaces, a cleaner environment, and a more prosperous nation.

If this nation of ours is to have a fresh beginning, those are some of the tasks before us. Rarely does a people get the chance to set a radically different and more promising course. That opportunity is now ours.

New and heightened responsibilities rest on all Americans, particularly those in last November's victorious coalition. Those who gained official position cannot hesitate to fulfill their promise of regulatory reason and budgetary sanity. Those in the business community can advance or retard this promise, depending on how we use our new-found influence.

If we fail to exercise self-restraint and instead place our special interests above the common good . . .

If we shun the self-denial and cooperation and compromise required of all Americans . . .

If we recoil from the self-reliance required to solve our national problems and to make this country again an economic mircale . . .

If we fail to carry out these responsibilities honorably, we won't be asked to bear them the next time.

We've been given a "second chance" to earn the public's confidence . . . to demonstrate our ability to help solve our collective problems . . . to provide sound, statesmanlike leadership.

Let's seize the opportunity that is ours and make the most of it!

CORRECTION OF A VOTE

Mr. CRANSTON. Mr. President, on the vote on Mr. PROXMIRE'S amendment No. 14, rollcall vote No. 66, on April 1, 1981, I was inadvertently recorded as voting in the negative. Changing the permanent record will not alter the outcome of that vote. I ask unanimous consent that I be recorded in favor of the Proxmire amendment at that time.

The PRESIDING OFFICER. (Mr. LUGAR). Is there objection? Without objection, it is so ordered.

EXPORT TRADING COMPANIES, TRADE ASSOCIATIONS, AND TRADE SERVICES ACT—S. 734

CORRECTION OF THE RECORD

In the RECORD of yesterday, April 8, 1981, at page S2866, in connection with rollcall vote No. 83, relating to final passage of S. 734, Export Trading Companies, Trade Associations, and Trade Services Act, in Mr. CRANSTON'S announcement in respect to Democratic Senators who were necessarily absent, through clerical inadvertence there was omitted the statement that if present and voting Mr. BRADLEY, Mr. WILLIAMS, Mr. DIXON, and Mr. LONG would each vote "yea."

The permanent RECORD will be corrected to reflect the foregoing statement of position.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-908. A communication from the Acting Under Secretary of Defense for Research and Engineering, transmitting, pursuant to law, the annual report on the Defense Industrial Reserve; to the Committee on Armed Services.

numbers of cargo shipments and entries that have been selected out as high risk for violations, including potential revenue losses. These selectivity programs include laboratory analyses, selective audits of importers and commodities, fraud investigations and cargo inspections.

Although in fiscal year 1981 Customs collected almost $18.50 per dollar expended from the total budget, the marginal returns from additional staffing will be much lower, because of the high level of compliance that already exists overall among U.S. importers and travelers.

Thank you for your interest in Customs.

Sincerely,

JACK T. LACY,
Comptroller.●

BANK EXPORT SERVICES ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Rhode Island (Mr. ST GERMAIN) is recognized for 5 minutes.

● Mr. ST GERMAIN. Mr. Speaker, today I am introducing legislation designed to increase bank involvement in export financing and the export of goods and services. Everyone supports the proposition that the United States must increase its exports of manufactured goods. Our performance over the years in this economic activity is poor. Foreign countries for years have placed a major emphasis on exports and the effects become more visible each year. Imports into this country continue to increase. U.S. manufacturers face serious competition from foreign manufacturers here at home. Government and the private sector realize that growth in our economy now depends on a major shift from reliance on domestic sales to a mix of domestic and foreign sales efforts.

Given this realization, comprehensive studies, both in the public and private sectors, were undertaken to determine what Government or economic policy was needed to encourage our domestic manufacturers to move into the export market. Early on it became clear that many of the problems and their solutions were difficult, expensive, and long-range in nature. For example, studies suggest that changes are needed in our tax laws to assist companies in their exporting. However, we are confronted with a short-term problem if tax incentives are provided—such tax incentives cost the Government revenues thus making it difficult to bring expenditures in line with revenues. Also, many studies suggest that Government assistance—loans and guarantees through the Ex-Im Bank, SBA, EDA, and other agencies—would provide substantial assistance. Again, these solutions would cost the Government money—money which is not available in the quantities suggested.

Since major expenditures either as tax benefits or major spending programs are not realistic solutions in today's environment, efforts must be directed toward changes which will encourage the private sector to become more involved.

One device which is suggested is the export trading company. The experience of our European and Japanese neighbors indicates that firms in those countries effectively utilize companies which specialize in importing and exporting goods and services. These trading companies provide manufacturers a means of reducing the risks associated with foreign business endeavors and offer a wide variety of services to their customers—including freight handling, financing, and market analysis. Proponents argue that this country needs to provide opportunities for the establishment and more successful operation of such firms in this Nation. Thus, a number of bills provide incentives for the establishment of export trading companies with the Department of Commerce providing the focus for these efforts.

Export trading companies can provide assistance to small and medium size businesses in the United States who produce goods and services which can be marketed abroad. To my knowledge, no one has suggested that we should not encourage the development of such firms. Thus, there is support for provisions defining the nature of an export trading company and providing information on the use and operation of such firms through existing trade promotion programs in the Department of Commerce.

There is a long tradition in this country of separating banking and commerce. As a result of practices evident in the period leading up to the crash of 1929 and the bank closings in the thirties, legislation was enacted which created a wall between the operations of our depository institutions and other fields of enterprise. This wall was believed necessary to assure that the institutions which held public funds and provided vital credit for all segments of U.S. industry and commerce were operated in a safe and sound manner and that concentrations of power resulting from combinations of banking and commercial firms were minimized. Over the years since passage of that legislation, Congress has allowed some exceptions to this separation. In particular, bank holding companies have been allowed to engage in activities which are "closely related to banking" and savings and loan holding companies have similar latitude. These exceptions reflect the changing nature of the financial services industry and the development of new product lines and needs in the marketplace.

In some cases, bank involvement in such areas led to increased risk to those institutions and in some cases led to bank failures. The Nation must, as a result, continue to be cautious about making changes which bridge that traditional separation. Depository institutions continue to play a vital role in our economy and steps which place those institutions at risk must receive careful consideration, and if allowed must provide sufficient protections to avoid undue risk.

It was natural then that concern was raised about allowing depository institutions to have equity interests in firms which provide many services not now offered by banks and which engage in high risk endeavors. The Federal Reserve System and the Federal Deposit Insurance Corporation on several occasions expressed their strong reservations. Clearly any legislation in this area must address these concerns.

On the other hand, these concerns must be balanced by the national need to expand its trade possibilities. This is particularly important to my area of New England. Traditionally, this region has been heavily involved in international trade. For example, the New England Congressional Institute provided information on this point:

In 1980, the six New England States generated over $10 billion in export sales. An estimated 135,000 jobs in New England are a direct result of export sales. When asked to predict the effect of passage of ETC legislation on their companies' receipts in the New England Congressional Institute survey conducted in April, 57 percent of the export trading company respondents estimated an increase of over 25 percent. All of the respondents indicated increases of at least 5 percent. Applying the lowest of those estimates to current export data suggests that *the potential effect of ETC legislation in New England means 500 million dollars earned in export sales, and over 10,000 jobs.* (Emphasis in original.)

The Institute goes on to say:

New England, which has over 25,000 manufacturing firms, has a growing interest in export trade among its small and medium-sized firms. In the opinion survey conducted by the New England Congressional Institute in April, 52 percent of the manufacturing sector respondents indicated they would be interested in utilizing the services of an ETC. Of these, 24 percent do not currently export. The survey appears to indicate that *several thousand New England firms are interested in using the services of an export trading company.* (Emphasis in original.)

Studies such as these point up the need for improving the chances of those small manufacturers to engage in international trade. To do so, these firms need an intermediary to absorb some of the risks that are involved in international activities. Increased activity by export trading companies appears to be one way to generate some benefits in this area.

Bank Holding Companies and Edge Act Corporations can provide services which will make an ETC function more effectively. They can supply the capital necessary to allow ETC's to experience large economies of scale. The existing international communications and data processing systems and financial expertise of large BHC and Edge Act Corporations will provide additional benefits to ETC's. Also, liberalized roles for the issuance of bankers' acceptances—a form of financing provided by depository institutions to facilitate trade transactions—should pro-

vide increased financing capabilities for these firms.

With these advantages, and the concerns about banks' involvement in commerce in mind, I explored the possibility of allowing depository institutions to engage in export trading company activities in a manner which assures as much separation as possible between that activity and the deposit taking function of the depository institutions. This can be accomplished by allowing only direct investments (purchases of the securities of export trading companies) by bank holding companies or Edge Act Corporations. Thus, operating export trading company activities within a bank itself would be precluded. The operations would be in separate subsidiaries. Clearly any legislation in this area must address these concerns.

The Bank Export Services Act contains two major provisions. The first autorizes bank holding companies and Edge Act Corporations to invest in export trading companies. Export trading companies are defined as organizations that operate under U.S. or State law exclusively to export or facilitate the export of goods or services produced in the United States by providing one or more export tradé services. These services would include consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communications and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided to facilitate the export of U.S. goods and services.

Bank holding companies would be permitted to invest up to 5 percent of their consolidated capital and surplus, and Edge Act Corporations up to 25 percent of their capital and surplus, in export trading companies. All investments in export trading companies would be subject to prior approval by the Board of Governors of the Federal Reserve System. This will insure the proper review and supervision needed to reduce the possible risk to depository institution subsidiaries. Export trading companies could be owned wholly or in part by one or more bank holding companies or by one or more Edge Act Corporations.

Export trading companies could become involved in underwriting, selling, or distributing securities in the United States only to the extent their parent bank holding companies or Edge Act Corporations could legally do so. Export trading companies also could not engage in manufacturing or agricultural production activities, or have a name similar to their parent organizations.

Limits on the amount of permissible lending between parent companies and affiliates, contained in section 23A of the Federal Reserve Act, would apply to export trading company affiliates of bank holding companies and Edge Act Corporations.

The second section of the Bank Export Services Act amends the Federal Reserve Act provision relating to bankers' acceptances. The coverage of the provision would be broadened to include nonmember banks and branches and agencies of foreign banks subject to reserve requirements. The overall limit on a bank's acceptances, including its participation share in acceptances originated by others, would be raised from the current level of 50 percent of the bank's paid up and unimpaired capital stock and surplus (100 percent with Federal Reserve Board approval) to 150 percent (200 percent with Board approval).

The new provision would specify that no more than 50 percent of a bank's authorized acceptances could be connected with domestic transactions, and would delete current language limiting domestic acceptances to 50 percent of a bank's capital stock and surplus. The current limitation on the issuance of unsecured acceptances for any one customer to 10 percent of the bank's capital and surplus would be retained. The new provision also would specify that, when banks enter participation agreements to share the obligations of an acceptance, the portion of the obligation retained or purchased by a bank would count toward that bank's acceptance limits. The existing requirement that acceptances involving domestic shipments must include shipping documents that convey or secure title would be deleted.

The Federal Reserve Board would be authorized to define any terms in carrying out the provision.

This legislation is, I believe, a reasonable approach to resolving the twin concerns of insuring bank safety and soundness by limiting the breach in the separation of banking and commerce, and encouraging the flow of exports from this Nation. It is anticipated that the committee can move expeditiously on this issue. To that end, the Subcommittee on Financial Institutions Supervision, Regulation and Insurance will conduct hearings on this bill on April 21 and 22 and will meet in executive session to mark up the legislation on April 27.●

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Connecticut (Mrs. KENNELLY) is recognized for 5 minutes.

[Mrs. KENNELLY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. MILLER) is recognized for 10 minutes.

[Mr. MILLER of California addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

COMMUNICATION FROM THE SPEAKER OF THE HOUSE OF REPRESENTATIVES TO THE CLERK OF THE HOUSE OF REPRESENTATIVES

The SPEAKER pro tempore laid before the House the following communication from the Speaker of the House of Representatives:

U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., March 30, 1982.

Hon. EDMUND L. HENSHAW, JR.,
Clerk, House of Representatives, H-105 The Capitol, Washington, D.C.

DEAR MR. CLERK: I have reviewed your notification letter of March 29, 1982 informing me, pursuant to the provisions of House Rule L (50) of receipt of a subpoena directed to you as custodian for House documents in a pending case, *Benford v. American Broadcasting Companies, Inc.*, Civ. Action No. N79-2386 (District of Maryland) and commanding you to appear for deposition at a yet undisclosed room at the Holiday Inn in Chevy Chase, Maryland and to bring with you what I understand to comprise approximately 100 linear shelf feet of records relating to the conduct of a legislative investigation.

After consulting with the Majority and Minority Leaders and Whips of the House, as I have from time to time in matters of this sort, I must advise and instruct you not to carry these documents outside the Capitol to a place where their preservation cannot be adequately assured.

I need only remind you of your duties in this regard and the precedents and prerogatives of the House which bind you to properly discharge the responsibilities devolved upon you by rules of the House. Since at least 1879, the House has insisted that no officer or employee of the House has a right either voluntarily or in obedience to a subpoena to produce any original document belonging to its files. The House cannot properly be assured that its papers will remain safe and secure if they are physically carried from their place in the Capitol and delivered to a yet undisclosed room at a Holiday Inn in Maryland.

The gravity of this attempt to improperly wrest control of documents belonging to the House is emphasized by the breadth and intrusiveness of a subpoena which seeks documents generated during a duly authorized investigation by a committee of the House. As you are aware the investigative records of a committee of the House are not subject to judicial process.

Accordingly, I must instruct you not to produce the records in your control and possession at this time. Of course, (if after further proceedings, you should be served with a narrow and specific subpoena for records which are actually relevant and not privileged under circumstances which enable you to assure their preservation, and do not require you to carry the records to a distant jurisdiction, the matter can be reconsidered at that time.)

Sincerely,

THOMAS P. O'NEILL, JR.,
Speaker.

JIM WRIGHT,
Majority Leader.

THOMAS S. FOLEY,
Majority Whip.

ROBERT H. MICHEL,
Minority Leader.

TRENT LOTT,
Minority Whip.

try to balance the budget at their expense.

I urge my colleagues to vote for the passage of this legislation.●

● Mr. ROBERTS of South Dakota. Mr. Speaker, I rise in support of H.R. 6782, the Disability Compensation and Survivors' Benefits for Veterans Amendments of 1982.

Traditionally, Congress has increased veterans' compensation rates whenever there has been an appreciable increase in the cost of living index. H.R. 6782 authorizes a 7.4 percent cost of living adjustment in the rates of compensation for disabled veterans and for the survivors of deceased veterans.

It is the duty of this Congress, and future Congresses, to remember and honor those who have offered their lives for the defense of their country. I join the committee in supporting this COLA for veterans compensation. The President has recommended this increase, the committee has endorsed this increase, and all the Members of this body should support this COLA.

The contracting out of services by Veterans' Administration facilities has been an issue of much controversy. Last year this Congress passed veterans legislation that included a provision to prevent the VA from contracting out. Again, this year, H.R. 6782 prohibits the VA from contracting out medical services unless it determines that the service cannot be provided in-house or that contracting for the service will enhance the quality of medical care provided by the facility.

We must not jeopardize the quality of care offered to our veterans. H.R. 6782 assures the veterans using VA facilities that only the best care available will be provided.

H.R. 6782 provides for many other areas of care for and service to the veteran. It permits members of the Senior Reserve Officers Training Corps to become eligible for disability compensation if an injury or disease is incurred while in training. H.R. 6782 corrects some inequities in the compensation received by blinded veterans, reinstates the $300 non-service-connected burial allowance for veterans who die in a contract nursing home, or have an insufficient estate to cover the cost of burial.

H.R. 6782 is needed to preserve our commitment to veterans. I urge my colleagues to support H.R. 6782.●

Mr. MONTGOMERY. Mr. Speaker, I have no further requests for time on this side of the aisle, and I yield back the balance of my time.

Mr. HAMMERSCHMIDT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. All time has expired.

The question is on the motion offered by the gentleman from Mississippi (Mr. MONTGOMERY) that the House suspend the rules and pass the bill, H.R. 6782, as amended.

The question was taken.

Mr. HAMMERSCHMIDT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE PRIVILEGED REPORT

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight to file a privileged report on a bill making supplemental appropriations for the fiscal year ending September 30, 1982, and for other purposes.

Mr. PURSELL reserved all points of order on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

EXPORT TRADING COMPANY ACT OF 1931

Mr. BINGHAM. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1799) entitled "The Export Trading Company Act of 1981," as amended.

The Clerk read as follows:

H.R. 1799

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as "The Export Trading Company Act of 1982".

FINDINGS; DECLARATION OF PURPOSE

SEC. 2. (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 percent of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(6) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(7) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(8) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(9) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(10) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by encouraging investment in export trading companies by certain banking institutions, and by modifying the application of the antitrust laws to certain export trade.

DEFINITIONS

SEC. 3. For purposes of this section and sections 2 and 4 of this Act—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services;

(3) the term "export trade services" includes international market research, advertising, marketing, insurance, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means any person, corporation, partnership, association, or similar organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services producing in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "export trade association" means an association engaged solely in export trade which is exempt from the antitrust laws under the Webb-Pomerene Act;

(6) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(8) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 4. The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers and exportable goods and services and firms offering export trade services.

TITLE I—EXPORT TRADING COMPANIES

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 101. (a) Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has been approved by the Board, except that such investments, whether direct or indirect, in such shares shall not exceed 5 percent of the bank holding company's consolidated capital and surplus. No approval may be granted by the Board under this paragraph unless the Board has taken into consideration the financial and managerial resources, competitive situation, and future prospects of the bank holding company and the export trading company involved and has imposed such restrictions, by regulation or otherwise, as the Board deems necessary to prevent conflicts of interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair competition. Notwithstanding any other provision of law, in any case in which a bank holding company invests in an export trading company, such bank holding company shall be deemed to be a member bank, with respect to such export trading company, for purposes of section 23A of the Federal Reserve Act, and such export trading company shall be deemed to be an affiliate for purposes of such section, except that amounts invested pursuant to the first sentence of this paragraph shall not apply with respect to the limitations imposed under section 23A of the Federal Reserve Act. For purposes of this paragraph, the term 'export trading company' means a company which does business under the laws of the United States or any State and which is organized and operated principally for purposes of exporting goods or services produced in the United States or which facilitates the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. For purposes of this paragraph, the term bank 'export trading services' includes consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States. For purposes of this paragraph, an export trading company (A) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that its bank holding company investor may do so under applicable Federal and State banking law and regulations, and (B) may not engage in manufacturing or agricultural production activities. The name of the export trading company involved shall not be similar in any respect to the name of the bank holding company which owns any of its voting stock or other evidences of ownership.".

(b) Section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.) is amended—

(1) in the first paragraph of subsection (c), by inserting "(1)" after "(c)"; and

(2) by inserting after the first paragraph of subsection (c) the following:

"(2)(A) Notwithstanding any other provision of law, with the approval of the Board of Governors of the Federal Reserve System, a corporation organized under this section may purchase and hold stock or other certificates of ownership in any other corporation which is an export trading company. No approval may be granted by the Board under this paragraph unless the Board has taken into consideration the financial and managerial resources, competitive situation, and future prospects of the corporations involved and has imposed such restrictions, by regulation or otherwise, as the Board deems necessary to prevent conflicts of interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair competition. No corporation organized under this section shall invest in such export trading companies in an amount in excess of 25 percent of its own capital and surplus. The second proviso of paragraph (1) shall apply to any corporation referred to in this paragraph.

"(B) Notwithstanding any other provision of law, in any case in which a corporation organized under this section purchases or holds stock or other certificates of ownership in any other corporation which is an export trading company, such acquiring corporation, or any bank or banking institution which purchases or holds stock or other certificates of ownership in such acquiring corporation, shall be deemed to be a member bank, with respect to such export trading company, for purposes of section 23A of this Act, and such export trading company shall be deemed to be an affiliate for purposes of such section, except that amounts invested pursuant to subparagraph (A) shall not apply with respect to the limitations imposed under section 23A of this Act.

"(C) For purposes of this section—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State and which is organized and operated principally for purposes of exporting goods or services produced in the United States or which facilitates the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services; and

"(ii) the term 'export trade services' includes consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States.

"(D) For purposes of this subsection, an export trading company—

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that the corporation which is organized under this section and which invests in the company defined in this clause may do so under applicable Federal and State banking law and regulations; and

"(ii) may not engage in manufacturing or agricultural production activities.

"(E) The name of the export trading company involved shall not be similar in any respect to the name of the corporation organized under this section which owns any of its voting stock or other evidences of ownership.".

TITLE II—EXPORT TRADE CERTIFICATES OF REVIEW

EXPORT TRADE PROMOTION DUTIES OF ATTORNEY GENERAL

SEC. 201. To promote and encourage export trade, the Attorney General may issue certificates of review. The Secretary of Commerce, in carrying out his responsibilities to promote the export of goods and services of the United States, may advise and assist persons with respect to applying for certificates of review.

APPLICATION FOR ISSUANCE OF CERTIFICATE OF REVIEW

SEC. 202. (a) To request the issuance of a certificate of review, a person shall submit to the Secretary of Commerce or the Attorney General a written application which—

(1) specifies conduct limited to export trade, and

(2) is in form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule issued under section 211.

Each application received by the Secretary of Commerce shall be forwarded, not later than 7 days after receipt, to the Attorney General.

(b)(1) With respect to each application submitted under subsection (a), the Attorney General shall publish in the Federal register notice that a certificate of review has been requested, the identity of each person requesting the certificate, and a description of the conduct with respect to which the certificate is requested. The notice shall be so published promptly, but not later than 10 days, after the application is received by the Attorney General.

(2) The Attorney General may not issue the certificate until the expiration of the 30-day period beginning on the date the application is received by the Attorney General.

ISSUANCE OF CERTIFICATE

SEC. 203. (a) The Attorney General shall issue a certificate of review to an applicant for the certificate if the application for the certificate satisfies the requirements of section 202, unless the Attorney General determines under subsection (b) that the conduct specified in the application is likely to result in a violation of the antitrust laws.

(b)(1) Not later than 60 days after the Attorney General receives an application under section 202, the Attorney General shall determine whether the conduct specified in the application is likely to result in a violation of the antitrust laws, except that if before the expiration of the 60-day period the Attorney General requests that the applicant submit additional information, the Attorney General shall make the determi-

nation not later than the expiration of the 60-day period, or of the 30-day period beginning on the date the additional information is submitted, whichever period ends later.

(2) Unless the Attorney General determines that the conduct specified in the application is likely to result in a violation of the antitrust laws, the Attorney General shall immediately issue a certificate of review to the applicant. If the Attorney General determines that the conduct specified in the application is likely to result in a violation of the antitrust laws, the Attorney General shall promptly transmit to the applicant a statement of the determination and the reasons in support of the determination.

(c) If the Attorney General denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of all documents submitted by the applicant in connection with the issuance of the certificate, the Attorney General shall return to the applicant, not later than 30 days after receiving the request, the documents and all copies of the documents available to the Attorney General, except to the extent that the information contained in a document has been made available to the public.

(d) The Attorney General shall specify in each certificate of review issued under this section—

(1) the conduct, including activities and methods of operation, to which the certificate applies,

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions applicable to the conduct.

(e) A certificate of review obtained by fraud is void ab initio.

REPORTING REQUIREMENT; AMENDMENT OF CERTIFICATE

SEC. 204. (a) Any person who receives a certificate of review—

(1) shall promptly report to the Attorney General any change relevant to the matters specified under section 203(d) in the certificate, and

(2) may submit to the Attorney General an application to amend the certificate to reflect the fact or effect of the change on the conduct specified in the certificate.

(b) For purposes of section 202 and section 203, an application for an amendment to a certificate of review shall be deemed to be an application for the issuance of a certificate of review, except that the effective date of the amendment shall be the date on which the application for the amendment is submitted to the Attorney General.

MODIFICATION OR REVOCATION OF CERTIFICATE

SEC. 205. (a) If at any time the Attorney General determines that the conduct engaged in under a certificate of review violates or is likely to result in a violation of the antitrust laws, the Attorney General shall give written notice of the determination to the person to whom the certificate was issued. The notice shall include a statement of the reasons in support of the determination. In the 30-day period beginning 30 days after the notice is given, the Attorney General shall modify or revoke the certificate, as may be appropriate.

(b) The person to whom the affected certificate was issued may bring an action in any appropriate district court of the United States to set aside the determination made under subsection (a) on the ground that the determination is erroneous.

JUDICIAL REVIEW; ADMISSIBILITY

SEC. 206. (a) Except as provided in section 205(b), no determination made by the Attorney General with respect to the issuance, amendment, or revocation of a certificate of review shall be subject to judicial review.

(b) No determination made by the Attorney General with respect to the issuance, amendment, or revocation of a certificate of rview shall be admissable in evidence in any administrative or judicial proceeding in support of any claim under the antitrust laws.

PROTECTION CONFERRED BY CERTIFICATE OF REVIEW

SEC. 207. (a) No person to whom a certificate of review is issued shall be subject to a criminal action for a violation of the antitrust laws or a violation of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(b) No person to whom a certificate of review is issued shall be liable for damages in a civil action brought by the Attorney General for a violation of the antitrust laws or of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(c)(1) No person to whom a certificate of review is issued shall be liable for damages exceeding actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for a violation of the antitrust laws or of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(2) If, with respect to any claim under section 4 of the Clayton Act (15 U.S.C. 15) brought against the person, the court finds that—

(A) the conduct alleged to violate the antitrust laws does not violate the antitrust laws,

(B) the conduct is conduct specified in a certificate of review, and

(C) the certificate of review was in effect at the time the conduct occurred,

the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(d) No person to whom a certificate of review is issued shall be liable under section 16 of the Clayton Act (15 U.S.C. 26), or any State antitrust law similar to such section, with respect to threatened loss or damage by a violation of the antitrust laws or of any State law similar to the antitrust laws if the threatened loss or damage arises from conduct specified in the certificate of review and if the certificate is in effect at the time the conduct occurs.

INJUNCTIVE RELIEF

SEC. 208. Except as provided in section 207(d), a certificate of review shall have no legal effect on the authority of a court to grant equitable relief in an action for a violation of the antitrust laws brought against the person to whom the certificate is issued. In granting the relief, the court shall have jurisdiction to modify or revoke the certificate of review, as may be appropriate.

DISCLOSURE OF INFORMATION

SEC. 209. (a) Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5, United States Code.

(b)(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Attorney General deems disclosure of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule issued under section 211 permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

DESCRIPTIVE GUIDELINES

SEC. 210. (a) To promote greater certainty regarding the application of the antitrust laws to export trade, the Attorney General may issue guidelines—

(1) describing specific types of conduct with respect to which the Attorney General has made, or would make, determinations under section 203 and section 205, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Section 553 of title 5, United States Code, shall not apply to the issuance of guidelines under subsection (a).

ISSUANCE OF RULES

SEC. 211. Not later than 120 days after the date of the enactment of this Act, the Attorney General shall issue rules to carry out this title.

DEFINITIONS

SEC. 212. For purposes of this title—

(1) The term "antitrust laws" shall have the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that the term shall include section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition.

(2) the term "Attorney General" means the Attorney General of the United States or his designee.

(3) the term "certificate of review" means a certificate issued by the Attorney General under section 203.

(4) the term "export trade" means the export of goods or services from the United States to foreign nations, and

(5) the term "State" shall have the meaning given it in section 4G of the Clayton Act (15 U.S.C. 15 g).

EFFECTIVE DATES

SEC. 213. (a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(b) Section 202 and section 203 shall take effect 90 days after the effective date of the rules first issued under section 211.

The SPEAKER pro tempore. Is a second demanded?

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York (Mr. BINGHAM) will be recognized for 20 minutes, and the gentleman from California (Mr. LAGOMARSINO) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Mr. BINGHAM).

(Mr. BINGHAM asked and was given permission to revise and extend his remarks.)

Mr. BINGHAM. Mr. Speaker, I yield such time as I may consume.

Mr. Speaker, H.R. 1799 has been brought to the floor with th concerted efforts of a number of Members of the House, and with the efforts of three committees.

On behalf of Chairman ZABLOCKI and myself, I would like to pay particular tribute to the gentleman from Washington (Mr. BONKER), the original sponsor of this resolution, who has been an inspiration throughout and has been determined to bring this legislation to enactment.

The chairman of the Committee on the Judiciary (Mr. RODINO), and his ranking member, the gentleman from Illinois (Mr. MCCLORY), have been most cooperative in helping to move the legislation and they have reported the antitrust title, which is title II of H.R. 1799, which the distinguished chairman of the Committee on the Judiciary will explain a little later. That is part of the motion, and the version of title II as amended by the Judiciary Committee will be passed if the House agrees to the motion.

In addition to the reporting the antitrust title of H.R. 1799, the Committee on the Judiciary has reported companion legislation which makes an important contribution to the efforts to facilitate the formation of export trade associations. That is H.R. 5235, but that will not be before the House today.

The third portion of the package rested with the Committee on Banking, Finance and Urban Affairs. That is represented by title I of H.R. 1799. The provisions of title I as they appear in the motion that we are making have been amended in a separate bill, H.R. 6016, by the Committee on banking, Finance and Urban Affairs, as will be explained when that bill comes before the House immediately following this one.

The differences will be resolved eventually in the motion to go to conference. That motion will be to stike all after the enacting clause of the Senate bill, S. 734, and substitute the language of the bill brought to the floor by the Committee on Banking, Finance and Urban Affairs, and the first sections and title II of H.R. 1799.

Mr. Speaker, this bill is but one of a number of measures needed to enhance the competitiveness of U.S. goods and services in export markets and thereby to strengthen the economy and preserve American jobs. It would remove some of the obstacles to trading company formation and operations in the United States. It would do that by providing for a central office in the Commerce Department charged with facilitating the activities of trading companies and it would provide, under title II, somewhat greater assurance of exemption from antitrust restrictions to the export activities of trading companies.

□ 1320

It would also, under title I by the Banking Committee, permit certain banking institutions to invest in trading companies, providing greater access to financing, which is such an important and scarce ingredient in successful trading company operations. As the Members can see, the bills being brought to them today are the product of several committees. They are not entirely satisfactory to all of us, but such compromises never are. I do hope that some of the provisions of titles I and titles II can be considered further, and perhaps modified, in the course of the conference.

I believe, for example, that the antitrust benefits of Webb-Pomerene Act coverage should be accorded to exporters of services as well as the exporters of goods. That is not included in H.R. 1799 as amended by the Judiciary Committee. I am hopeful that provision can be reviewed in conference and possibly restored to this bill with the support of the distinguished chairman of the Judiciary Committee. Likewise, I believe it is crucial that, in providing for investment by bank-holding companies in export trading companies with the approval of the Federal Reserve Board, we not impose new restrictions on the operations of export trading companies which would reduce their export effectiveness. That would be strengthening them with one hand and weakening them with the other.

Nothing in current laws prohibits the formation and operation of trading companies which specialize in marketing U.S. goods and services abroad. Indeed there are hundreds of such companies operating with varying degrees of success in the United States today. Many of them are extremely effective in penetrating foreign markets with appropriate U.S. goods and services and producing sales that probably would otherwise go to companies from other nations.

International trading, however, is a tough business. It requires a thorough knowledge of both the United States and foreign markets, and the many complexities of international trade, finance, shipping, and other trade services. It requires capital. It requires, most of all, good salesmanship and an ability to take risks that other companies might not take.

The Subcommittee on International Economic Policy and Trade, which I have the honor to chair, held extensive hearings on this and predecessor legislation in both the current Congress and in the 95th Congress. We heard testimony from a wide range of public and private witnesses, including many trading companies. Members of the subcommittee and the subcommittee staff also have talked informally with international traders and trading company officials. On the basis of this extensive consultation, I feel confident that this is useful legislation which will be helpful to U.S. export efforts without detracting from important antitrust and banking practices and principles.

At this time, Mr. Speaker, I want particularly to commend the efforts of the gentleman from Washington (Mr. BONKER), a member of the subcommittee, for his patient yet persistent efforts on behalf of this legislation. He was the leading sponsor of similar legislation in the last Congress, which was reported favorably by the Committee on Foreign Affairs but never reached the floor because other committees of jurisdiction had not completed action. He reintroduced the legislation early in this Congress, and has worked tirelessly to see that meaningful export trading company legislation reached the House floor. No Member of this House has been more diligent on behalf of this legislation than the gentleman from Washington, and I commend him for his authorship of H.R. 1799 and for the broader role he has played in the effort to make trading companies a more effective and vital part of the U.S. export sector. His devotion to jobs through exports is well known from his leadership of the House Export Task Force, and enactment by the Congress of this export trading company legislation is but one outcome of the attention to the problems of the export sector which the task force has focussed under his leadership.

Finally, Mr. Speaker, this bill should not be regarded as a panacea for all of our economic problems. I feel that it will help reduce our alarming export trade deficit, but it will not eliminate that deficit. The causes of the deficit are more fundamental than export trading companies. The deficit is largely a function of the productivity of the U.S. economy and the value of foreign currencies in relation to the dollar, which will have to be addressed in other ways, legislative and otherwise. Nor will this legislation put every American back to work, although I believe it will produce and restore some jobs.

Mr. Speaker, I believe this is constructive legislation which deserves the support of the House. It has the support of the current administration, just as it was supported by the previous administration. I am sure all of the committees of the House which have taken part in considering it will conduct careful oversight to determine its effects after it has been enacted. Hopefully, the spotlight that this legislation has put on export trading companies will make American businesses and business officials more will-

ing to use trading companies as intermediaries to increase their export sales. Many American companies have either ignored foreign markets or tried to do their own export marketing without the expertise and experience and contacts that a good trading company can bring to the export effort. I hope this legislation, if it does nothing else, will reverse that attitude and help to establish trading companies as respectable and necessary participants in the national economy, and give them the standing they deserve both with the Federal Government and with the broader U.S. business community. It has become a cliche that the Europeans and Japanese have used export trading companies to their advantage to capture a larger share of international markets. This legislation does not purport to replicate Japanese trading companies in the United States. That is impractical and probably undesirable. But it is time we recognize export trading companies for the important force they are and can be in the difficult business of exporting, and that we try to remove some of the unnecessary obstacles they face in competing for international business on behalf of U.S. producers. H.R. 1799 goes a long way in that direction. It is about time that we enact this kind of legislation, before more of our markets and jobs are lost. I commend all of the committees and Members who have sponsored and supported this legislation, and I urge its adoption by the House.

Mr. Speaker, I reserve the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LAGOMARSINO asked and was given permission to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, as a cosponsor of H.R. 1799, I want to congratulate the administration, and particularly Secretary of Commerce Mac Baldrige, for their tireless efforts in promoting the export trading company concept.

The Members of this House are fully aware, I am sure, that ETC legislation has been the subject of extensive hearings in three committees in the House over a period, in some cases, of several years. The other body passed legislation during both the 96th Congress and the 1st session of the 97th Congress, and only now have we finally reached the floor with our own export trading company bill. It is long overdue, but we can be thankful that it is finally here.

I believe H.R. 1799 represents a responsible approach to helping improve America's export capability and thereby improving our serious balance-of-trade deficit. By promoting the establishment of export trading companies, H.R. 1799 should prove to be particularly beneficial for small and medium-sized businesses that do not have the experience or resources to attempt export trade on their own. The bill also establishes a procedure for the Attorney General to issue certificates of review indicating the ETC would not be in violation of antitrust laws. The certification procedure developed by H.R. 1799 would provide greater certainty for export trading companies' operations.

It was this lack of certainty in the Webb-Promerene Act that kept that law from serving as a greater stimulus to export trade. By correcting the deficiencies of that law and adding "services" to the accepted list of activities that can be the basis for forming ETC's, H.R. 1799 goes a long way toward meeting the challenge of the Japanese and European trading company competitors.

The administration strongly supports this bill and the concept of export trading companies. As Secretary Baldrige says:

Export trading company legislation is an important step in mobilizing our untapped export resources. The risks and costs involved in marketing products overseas, coupled with a lack of knowledge of foreign markets and of the cultural complexities of an unfamiliar society, deter small and even medium-sized companies from attempting to export their goods. The existence of ETC's who specialize in exporting, who can assume the risks, who have the financial capability and the legal and technical expertise to penetrate foreign markets, will permit these small and medium-sized firms to improve greatly their export performance.

Another important feature of H.R. 1799 is the reference to the role of States in initiating, promoting, and expanding exports in their own efforts to improve export trade. Certainly, in the case of California, the State has been a leader in shaping export policy that deals efficiently with trade and services with its neighbors to the South and in the Pacific basin.

I strongly support the provisions of H.R. 1799 designed to promote the development of new export trading companies dealing in goods and services. I urge my colleagues to give their full support to this bill.

Mr. BINGHAM. Mr. Speaker, I yield 5 minutes to the gentleman from Washington (Mr. BONKER).

(Mr. BONKER asked and was given permission to revise and extend his remarks.)

Mr. BONKER. Mr. Speaker, the export trading company is an issue whose time has come. I first introduced this bill in the last session of Congress, and reintroduced it in this session. Thanks largely to the leadership efforts of the chairman of the subcommittee, the gentleman from New York (Mr. BINGHAM), whose retirement will be greatly noticed in the House and on this Foreign Affairs Committee; and the Chairman of the Judiciary Committee (Mr RODINO), who has carefully crafted the antitrust provisions, do we have this bill before us today.

Mr. Speaker, the United States has traditionally relied on a growing domestic economy to meet our growth needs, but today we find ourselves in a fiercely competitive world environment, where Japan alone has challenged U.S. preeminence in a number of areas. With respect to overall trade policy, the United States continues to be the number one exporter, but the fact of the matter is that we are rapidly losing our place in the world market. This is dramatized when our share in the market drops from 18.2 percent in 1960 to 12.9 percent in 1981. Measured by GNP, the United States is rapidly dropping behind other industrialized countries.

The fact is, the United States will not experience economic recovery at home until we realize our full potential on the world market. In the Northwest, we find our timber-based economy is no longer sufficient to meet our growth needs. Indeed, we are experiencing economic recession because we have not found new outlets for our traditional markets. But, when one considers in the Northwest our vast natural resources, the manufacturing capability, the excellent port facilities and our proximity to the Pacific Rim countries, we have tremendous potential in the world market, and if we effectively compete in that market, we can experience economic revival in the Northwest.

Exports mean jobs. That was the theme of the Department of Commerce during World Trade Week, and when one looks at the fact that today exports account for over 3.5 million jobs, and the fact that every $1 billion in manufactured goods represents 31,000 new jobs, one can readily understand and appreciate the importance of export trade in terms of jobs created in this country.

Chase Econometric has estimated that the export trading company bill, if enacted, will create anywhere between 320,000 and 600,000 jobs in this country, and it will increase the GNP by $27 to $35 billion, and reduce the Federal deficit by $11 to $22 billion.

The export trading company bill is the top priority trade issue for many business organizations, including the Chamber of Commerce. It is a top priority issue for this administration. The President's Export Council has rated it No. 1, and the Export Task Force, which I chair, has listed it as a very important issue.

The export trading company bill will benefit primarily the small- and medium-sized firms that have the capability but lack the facility and resources to get into the world market. It has been estimated by the Department of Commerce that there are about 20,000 medium-sized firms that have the capability and have the products to compete in the world market, but lack the opportunity to do so. Why? Because they are inhibited by at least three reasons:

First, they lack the financial capital to get into the export market. This bill

will allow participation by the banks in the formation of ETC's, and provide essential financial capital to start up and operate export trading companies.

Second, antitrust provisions have served as an inhibiting factor. Through a certification procedure, provided for in the bill, which the Department of Justice will review and approve, ETC's will enjoy immunity from antitrust laws. Largely through the work of the chairman of the Judiciary Committee, I think we have overcome that hurdle and removed the uncertainty that now plagues companies that come together for that purpose.

Lastly, we need to raise the trade consciousness of many businessmen who want to get into the market but lack the imagination. The Department of Commerce is going on a nationwide campaign to educate businessmen of their potential and capabilities to get into the export market. Mr. Speaker, this legislation and this legislation alone addresses all three of those issues.

□ 1330

In conclusion, Mr. Speaker, let me say that if we are going to have economic recovery in this country, we have got to realize our true potential in the world market. All of the reports indicate that there is a very attractive market out there, and that we have the manufacturing capability to compete in that market. Passage of this bill today makes that potential a reality.

Mr. Speaker, I have letters that I wish to have inserted in the RECORD, from the Chamber of Commerce, Trade Net, and other trade organizations supporting this legislation, plus a summary of the bill.

Those materials are as follows:

H.R. 1799—THE EXPORT TRADING COMPANY ACT OF 1981

CHRONOLOGY OF LEGISLATION

On the basis of hearings in the 96th Congress, the Committee on Foreign Affairs reported favorably legislation to encourage the formation and operation of export trading companies and associations (H.R. 7230, Export Trading Company Act of 1980, introduced by Mr. Bonker of Washington, and others, House Report 96-1151), which was similar to H.R. 1799. Two other committees of the House to which that and similar legislation was referred jointly failed to complete action, however, and the 96th Congress adjourned without having an opportunity to consider H.R. 7230.

H.R. 1799 was introduced by Mr. Bonker, a member of the Foreign Affairs Committee, and other Members, on February 6, 1981, and was subsequently referred to the Subcommittee on International Economic Policy and Trade. Following several subcommittee hearings on it and related bills, the subcommittee on March 29, 1982, marked up H.R. 1799 and reported it favorably to the full Committee on Foreign Affairs with several amendments.

The full Committee on Foreign Affairs considered the subcommittee's recommendations on H.R. 1799 on April 29, 1982, and ordered the bill favorably reported to the House.

The Judiciary Committee favorably reported H.R. 1799 (House Report 97-637, Pt. II, to be filed July 27). The Banking, Finance and Urban Affairs Committee did not act on H.R. 1799, but did report a bill (H.R. 6016) whose provisions are almost identical to the banking provisions of H.R. 1799.

NEED FOR THE LEGISLATION

Lack of operating capital and financing is the major obstacle to expanded sales faced by American trading companies. Few U.S.-based trading companies are publicly traded corporations. Most are privately held, inhibiting their ability to raise capital through issuance of stock or other debentures. Few have significant assets except for accounts receivable, against which most U.S. banks have been traditionally reluctant to grant loans. Not only are trading companies generally among the most asset-poor firms competing for bank loans, their business success depends upon their ability to penetrate often poorly understood foreign markets and to take other risks, such as operating on the basis of oral rather than written contracts, and sales agreements. The successful trading company turns such risks into profits by experience and intimate knowledge of its markets and customers.

Such intangibles, however, rarely meet the requirements of bank lending officers who must justify their loans to cautious superiors and regulatory agencies. Trading companies, therefore, typically command the lowest loan ratings of any of the categories of businesses seeking bank loans. Most trading company officials who testified before or otherwise consulted with the committee indicated that they are able to borrow only on their personal lines of credit, or against company reserves pledged as collateral. They were unanimous in citing this as the major constraint on their business, particularly when their foreign competitors have much greater access to short- and long-term financing.

Statutory provisions and government regulations that directly or indirectly discriminate against trading companies are a second obstacle to their increased effectiveness as U.S. exporters. The reluctance of banks to finance exports is itself a product of banking laws that place a high premium on cautious lending policies and impose strict separation between banks and commercial enterprises such as trading companies. In addition, the restrictions, complexity, and uncertainty of current antitrust laws inhibit producers of similar products and services from entering into cooperative arrangements for purposes of export marketing that could increases their exporting effectiveness.

As early as 1918, the Congress recognized the need to facilitiate the export of U.S. goods by exempting the export activities of firms from certain U.S. laws that would place them at a competitive disadvantage in foreign trade. In that year, the Congress passed the Webb-Pomerene Act permitting U.S. firms to form associations strictly for the purpose of exporting goods without the antitrust constraints applicable to domestic trade. In the 1930's there were as many as 57 Webb-Pomerene associations accounting for some 19 percent of total U.S. exports. By 1979 the number had declined to 33, accounting for less than 2 percent of U.S. exports. Antitrust exemptions under Webb-Pomerene are not available to exporters of services, currently one of the strongest U.S. export sectors, and many producers of goods regard Webb-Pomerene as providing insufficient protection from antitrust penalties.

No Federal agencies are explicitly charged with assisting trading companies and assuring that Federal regulations do not unnecessarily hamper trading companies. In fact, some Federal regulations and practices have just such an effect. For example, Commerce Department rules governing U.S.-sponsored international trade fairs discourage exhibitors from displaying more than one line of merchandise per booth. Export trading companies, however, typically handle disparate lines of merchandise, and many are too small to be able to afford more than one booth. Such mundane government insensitivity to the needs of trading companies, while often inadvertent, is nonetheless damaging to their effectiveness as exporters.

The need for assistance to trading companies in these three areas—access to financing, assurance of antitrust exemption for specific export practices and activities, and designation of a federal agency responsible for trading companies—was the basis for the formulation of H.R. 1799.

THE POTENTIAL FOR EXPORT TRADING COMPANIES

The last decade was a period of frustration and disappointment for the United States in the area of international trade. Our first trade deficit of the 20th Century occured in 1971. While we have had a deficit nearly every year since, it is incorrect to place the blame solely on oil prices.

Many of our trading partners whose dependence on imported oil is greater than ours have consistently maintained a trade surplus while the U.S. was in deficit. Their success was due in part to an export consciousness, which has resulted in the displacement of American-made manufactured goods in world markets, including the largest single market—the United States.

The U.S. no longer can afford to ignore the value of export trade and the importance it plays in our domestic economy. During the last two decades, the U.S. share of world exports dropped from 18 percent in 1960 to 15.4 percent in 1970. It stood at 12 percent last year. Today, exports of goods account for only 8.2 percent of our gross national product, the lowest percentage of any industrialized nation in the world. While numbers vary according to the source the trend is as clear as it is alarming. Without a change, this trend could cost the United States hundreds of thousands of jobs, billions in economic activity, and the productivity boost that increased exports could generate for American industry.

The U.S. Government has not been as active in encouraging export trade or in providing assistance to the business community as have the governments of other nations. The American businessman perceives, and rightly so in many cases, that government regulations are impediments to international trade. These regulations can be ambiguous, confusing, and expensive. These self-imposed disincentives have served to deter many small- and medium-sized American companies from entering the international marketplace.

For years, our growing domestic market has satisfied the needs of the American businessman. He consequently has not had the need nor the desire to look into foreign markets that were often unreliable and risky, as well as politically and socially alien. Moreover, the American businessman lacked an expertise in conducting foreign sales—from locating the foreign buyer to packing, shipping, and completing export documentation.

Only 10 percent of the 250,000 manufacturing firms in the United States currently export. Fewer than one percent of these firms account for 80 percent of our exports. The Department of Commerce and others have estimated up to 20,000 U.S. manufacturers and agricultural producers offer goods and services which would be highly competitive abroad. Yet the small size and

inexperience of these firms leave them ill-equipped to absorb the costs and risks involved in developing overseas markets.

The current, prolonged recession has been a shock to many American businessmen, who are beginning to realize that the domestic economy cannot expand indefinitely. Export Trading Companies could provide America with a new service-industry able to lead thousands of new firms into overseas markets.

A private study by Chase Econometrics has estimated that by 1985, Export Trading Companies would increase the gross national product by $27 to $55 billion, increase employment by 330,000 to 640,000 jobs, and reduce the Federal deficit by $11 to $22 billion.

THE FUNCTION OF EXPORT TRADING COMPANIES

H.R. 1799 permits bank holding companies, with the approval of the Federal Reserve Board, to invest up to 5 percent of consolidated capital and surplus in an Export Trading Company. Extension of credit by a bank holding company to its ETC would be limited to 10 percent of the holding company's capital stock and surplus to any single trading company, and 20 percent of such stock and surplus to all trading companies. The bill also permits banking institutions organized under the Edge Act to invest up to 25 percent of capital and surplus, subject to the same requirements of Federal Reserve Board approval and limitations.

Title II of H.R. 1799, the antitrust provisions, provides limited protection from antitrust litigation. In 1918, Congress passed the Webb-Pomerene Act which was designed to allow U.S. companies to combine for exporting in ways that might otherwise have subjected them to antitrust liability. Webb-Pomerene exempts from the Sherman Antitrust Act any association which has been established "for the sole purpose of engaging in export trade," provided it does not lessen domestic competition. When the Act was passed, it was believed that export trade would be enhanced as small businesses would be able to share the costs and risks of exporting. The percentage of exports assisted by the approximately 30 existing Webb-Pomerene associations is currently less than 2 percent. It has been stated that the Act's lack of success is due to the fact that it does not extend its antitrust exemption to the service sector, and its statutory vagueness and uncertainty in interpretation and application create a potential threat of subsequent antitrust litigation.

As amended by the Judiciary Committee, H.R. 1799 provides for a certification procedure to be established within the Department of Justice. Upon review, the Justice Department may grant the trading company a certificate which provides protection against criminal and civil suits by the Government and substantial protection from private antitrust suits. I have included a section-by-section analysis which more fully explains the bill.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

Section 1 provides that the act may be cited as the "Export Trading Company Act of 1982."

Section 2—Findings; declaration of purpose

Section 2 sets forth the findings of the Congress, including: that "exports are responsible for * * * one out of every nine manufacturing jobs * * * and one out of every seven dollars of total United States goods produced"; that service-related industries "offer the greatest potential for significantly increased industrial trade"; that export services in the United States are fragmented and the U.S. economy needs "well-developed export trade intermediaries"; that State and local governmental authorities "can be an important source for expansion of total United States exports"; and that U.S. trading companies "should be able to draw on the resources, expertise, and knowledge of the United States banking system."

The purpose of the legislation is to increase U.S. exports by establishing in the Commerce Department an office to promote export trading companies and export trade associations, by transferring to the Commerce Department responsibility for administering the Webb-Pomerene Act, by making that act applicable to the export of services as well as goods, and by otherwise encouraging more efficient export trade services.

Section 3—Definitions

"Export trade," "export trade services," "export trading company," "export trade associations," and "United States" are defined in section 3 of the bill. These definitions, however, apply only to sections 2 through 4 of the bill because Titles I and II (below) contain their own definitions, or employ definitions in existing statutes.

Section 4—Office of Export Trade in the Department of Commerce

Section four directs the Secretary of Commerce to establish within the Department of Commerce an office to promote and encourage formation of export trade associations and export trading companies.

TITLE I—EXPORT TRADING COMPANIES

Title II amends the Bank Holding Company Act of 1956 and the Federal Reserve Act to facilitate the financing of export trading companies.

Section 101(a) amends the Bank Holding Company Act of 1956 to permit bank holding companies, with the approval of the Federal Reserve Board, to invest up to 5 percent of consolidated capital and surplus in an export trading company. In granting such approval, the Federal Reserve board is directed to consider the "financial and managerial resources, competitive situation, and future prospects" of the investing company and the export trading company, and may impose restrictions "to prevent conflicts of interest, unsafe or unsound banking practices, undue concentration of resources, and decreased or unfair competition." Extension of credit by a bank holding company to its export trading companies would be limited to 10 percent of the holding company's capital stock and surplus to any single trading company, and 20 percent of such stock and surplus to all trading companies. Export trading companies could underwrite, sell, or distribute securities in the United States only to the extent their investing bank holding companies could legally do so, and could not engage in manufacturing or agricultural production, or use a name similar to a parent banking organization.

Subsection (b) amends section 25(a) of the Federal Reserve Act to permit banking institutions organized under the Edge Act to invest up to 25 percent of capital and surplus, subject to the same requirements of Federal Reserve Board approval and limitations as described for bank holding companies in subsection (a) above.

The amendments made by this title define "export trading company" as a company organized "principally" for the purpose of exporting, or facilitating the export, of U.S. goods and services.

TITLE II—ANTITRUST PROVISIONS

Title II substantially amends the Webb-Pomerene Act (the "Act") to expand the eligibility of export trading organizations for exemption from the antitrust laws, and to provide the Federal certification of such exemptions.

Section 201 amends the definition section of the Act to include definitions of export trade (which is defined to include the export of goods *and services*) and export trading companies, which will also be eligible for the antitrust exemptions under section 2 of the Act.

Section 202 amends section 2 of the Act to exempt from antitrust law restrictions the activities of export trading associations and export trading companies provided those activities are not in restraint of trade within the United States, do not restrain any domestic competitor, and do not substantially lessen competition within the United States, except to the extent such activities may have a "direct substantial and reasonably foreseeable effect on trade or commerce within the United States." Such exception is to be specified in a certificate issued under section 4 of the Act.

Section 203 makes a technical amendment to section 3 of the Act.

Section 204 amends the Act to provide for procedures for the certification of export trade associations and export trading companies for the antitrust exemption provided in the Act. Applicants are required to submit information set forth in section 4 of the Act, including such information as the Secretary of Commerce (the "Secretary") considers necessary. The Secretary is required to issue a certificate within ninety (90) days after receiving an application, after consultation with the Attorney General and the Federal Trade Commission, specifying permissible export trade activities and methods, and any terms or conditions the Secretary considers necessary. Provision is made for expedited certification for temporary export trade activities and bidding or export sales deadlines. Certification decisions of the Secretary may be appealed under sections 556 and 557 of Title 5, United States Code (provisions of the Administrative Procedure Act). Provision is made for amendment of certificates on the basis of material changes affecting certified export trading companies and associations, and for modification of the activities of certified companies or associations and revocation of certificates by the Secretary, after opportunity for a hearing in accordance with Section 554 of Title 5, United States Code. The Attorney General and Federal Trade Commission are authorized to bring court actions to invalidate certifications 30 days after notice to the affected export trading association or export trading company, and no other person has standing to bring such actions.

Section 204 also amends the Act as follows: The Secretary is directed to issue proposed guidelines, within 90 days after enactment of the bill, for determining whether an export trade association or export trading company meets the requirements for certification under the Act. The guidelines are to be open for public comment for a period of 30 days prior to publication of final guidelines. Promulgation of these guidelines is exempt from the Administrative Procedure Act. Certified export trade associations and export trading companies are required to report to the Secretary annually on activities relevant to their certificates. Information submitted by export trade associations and export trading companies with respect to certification and in the required reports shall be confidential and exempt from disclosure (except for certain law enforcement procedures) to the extent the information deals with trade secrets or confidential business or financial information. The Secretary may require modi-

fication of the operations of a certified association or trading company to comply with the international obligations of the United States. The Secretary is directed to issue regulations to carry out the Act, after consultation with the Attorney General and the Federal Trade Commission.

Section 205 provides that export trade associations operating under the Webb-Pomerene Act immediately before the enactment of the bill may elect to continue to be governed by the Act as in existence prior to enactment, or by the Act as amended by the bill. If they choose the latter, they are certified automatically under the new provisions of the act upon filing the required applications for certification within 180 days after the date of enactment of the bill. Mr. Speaker, I am including letters from some of the interest groups, including the U.S. Chamber of Commerce and the Emergency Committee for American Trade, who have followed the progress of this legislation closely, and who are in support of our efforts.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, D.C., July 26, 1982.

Hon. DON BONKER,
Chairman, House Export Task Force,
U.S. House of Representatives, Washington, D.C.

DEAR DON: The U.S. Chamber of Commerce, an association of more than 250,000 members, respectfully requests that you urge all members of the House Export Task Force to support the export trading company (ETC) legislation when it comes to the House floor.

For more than three years, the Chamber has worked for passage of a bill that would promote and facilitate the formation of export trading companies—a private sector one-stop shop that could provide all of the services associated with exporting. This would be particularly beneficial to our small- and medium-sized business members. As one Chamber small businessman put it before the International Finance Subcommittee of the Senate Banking Committee, ". . . if you want to encourage exports by smaller firms and reorientate us to thinking in world market terms, then this legislation is desirable and is perceived by businessmen like me as a good idea long overdue."

A clear antitrust picture with respect to export combinations, as the certification process in H.R. 1799 provides for, will contribute significantly to the development of ETCs. Participation in ETCs by bank holding companies and bankers' banks, as provided for in H.R. 6016, brings both international expertise and financial resources to these export combinations.

While we believe that there is some room for improvement in both bills, as well as in the Senate-passed version S. 734, the parameters of these three bills are such that the conference on the House and Senate versions should produce an excellent piece of legislation. The Chamber will share its recommendations with the conferees at the appropriate time.

Quick House action is now in order, so that the legislation can be finalized and companies can begin to take advantage of this beneficial export format. Your leadership, along with that of Reps. St Germain and Rodino, on this important legislation is greatly appreciated.

We hope that every member of the House Export Task Force will support the export trading company legislation when it comes to a floor vote.

Sincerely,

MICHAEL A. SAMUELS.

STATEMENT OF CALMAN J. COHEN, VICE PRESIDENT, EMERGENCY COMMITTEE FOR AMERICAN TRADE

"The trading company legislation pending before the Congress is designed to promote U.S. export activity. U.S. business will be able under the legislation to learn in advance whether activities which they wish to undertake could lead to antitrust litigation.

The export trading companies themselves could provide to firms virtually all the services necessary to market and sell abroad, including the financing of export transactions.

Trading companies should enable many thousands of small and medium-sized businesses to venture for the first time into the international trade arena, which otherwise would be too risky a proposition for any one of them individually. In part this will be the case because it will be the trading company—and not the small firms supplying the trading company—that will take the many risks associated with export.

Most importantly, in many developing regions of the world—where sales and distribution networks of U.S. firms are often rudimentary—export trading companies have major potential. Trading companies can take on and perform well the brokering role between U.S. producers and developing country purchasers for industrial and agricultural products that will be in increasing demand throught the developing world.

Your leadership, Congressman Bonker, on export trading company legislation, together with that of your colleagues, gives ECAT members hope that we will see enactment of legislation in this session of the Congress.

TRADE NET,
Washington, D.C., July 26, 1982.

Hon. DON BONKER,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN BONKER: On the occasion of export trading company legislation reaching the floor, Trade Net would like to commend you for the fine job you have done in its formulation and committee management. Trade Net is especially interested in this legislation because of the focus on small- and medium-sized businesses which are or could be an integral component of the lives of many of the members of local-level organizations Trade Net plans to interest and involve in the promotion of export trade. Happily, the impact of increased exports by businesses of this magnitude will be felt personally, particularly in the area of jobs, by a wide variety of this country's citizens.

Trade Net would also like to take this opportunity to offer our compliments on your leadership of the House Export Task Force. Trade Net, which numbers among its Directors former Cabinet Members from both Republican and Democratic Administrations—William E. Simon, Bob Bergland, W. J. Usery, Jr. and Reubin O'D. Askew—feels strongly about the importance of nonpartisanship when it comes to international trade. You so effectively have adhered to that concept as you fulfilled the role of motivator and facilitator. Your efforts have not gone unnoticed and are greatly appreciated by those of us who value an open world trading system.

We urge and look forward to a speedy enactment of export trading company legislation and, thus, a successful culmination of your diligent efforts.

Sincerely,

SHARA GORDON,
President, Trade Net.

NATIONAL ASSOCIATION OF MANUFACTURERS,
July 27, 1982.

Hon. DON BONKER,
U.S. House of Representatives,
Washington, D.C.

DEAR DON: The need for legislation to encourage American export trading companies has if anything grown more acute since the first such bill was introduced by Senator Stevenson in August of 1979. The series of U.S. trade deficits has continued unabated: 1979, $40.4 billion; 1980, $36.4 billion; 1981, $39.7 billion. We have admittedly had significant growth in our exports, which went from $181 billion in 1979 to $233.7 billion in 1981. Further exports are now clearly essential to job creation. According to a recent Commerce Department study, fully thirty percent of the increase in private sector employment between 1977 and 1980 can be attributed to the production of manufactured goods for export. These gains, however, have not been sufficient to offset the serious problems of large, important and import sensitive sectors of the economy. As a result Congress is now actively considering ill-advised import restrictions, i.e. domestic content legislation, the effect of which could well be to weaken further our international competitiveness. We may avoid these errors in the 97th Congress, but we will not avoid them long unless Americans see tht an open international trading system works to their advantage, unless we improve U.S. competitiveness.

The Export Trading Company Act, H.R.1799, which you introduced in February, and the Bank Export Services Act, H.R. 6010, which Chairman St Germain introduced in March, are significant and very helpful steps in the right direction. The news that these bills will be taken up by the full House this week was welcome indeed. I have long believed that the House as a whole broadly supports these measures, and I am confident that, if they are put before the House, they will pass. You, Chairman St Germain, and others who have worked to bring this about deserve high praise.

It goes without saying that I would not in any way wish to diminish the significance of your achievement. It is simply a truism that the ultimate value of the legislation will depend in part upon decisions still to be made, namely the decisions of the conferees which respect to the difference between the House bills and the Export Trading Company Act as passed by the Senate in April of 1981, S. 734. I shall not attempt to review in detail each point of difference. I would however like to go over the most important of these briefly.

BANKING

The first point to be made is that the House Banking Committee, under the leadership of Chairman St Germain, did an excellent job in crafting a legislative proposal that is both prudent and potentially very helpful. Its fundamental approach is somewhat different from that of the Senate bill. The latter is freestanding while the former achieves its purpose by amending the Bank Holding Company Act of 1956. There is much to be preferred in the House bill, and the objectives of the legislation could be well served by either. We do feel, however, that there is merit in stating these objectives explicitly within the body of the bill as is done in S. 734. Here I have in mind the

language especially of Section 102(b) of S. 734, which explains that, "The purpose of this Act is to increase United States exports of products and services, particularly by small, medium-sized, and minority concerns, by encouraging more efficient provisions of export trade services to American producers and suppliers." We hope the conferees will decide to retain such a statement of purpose in the final version of the bank ETC bill.

Our chief concern, however, over the differences between the two approaches to bank involvement with export trading companies is a definitional one. H.R. 6016 defines an export trading company as an entity involved "exclusively" in exporting. The Committee has made an attempt to ensure that this definition is not unduly confining, but it may nevertheless prove to be so. Trading companies are not manufacturers—under this legislation they are not allowed to be—and they will need to buy as well as sell abroad if they are to thrive. Specifically, they will need to import and to engage in third country trade. It is perfectly reasonable to expect such entities, favored under the law for their capacity to expand exports, to be engaged "principally" in exporting, but it would be self-defeating to impose the requirement that ETCs be exclusively involved in exporting or to force them to justify their non-exporting activities on a transaction-by-transaction basis. We hope, therefore, that the House, in conference, will reconsider this limitation within the definition of bank-related export trading companies.

Another aspect of the House's definition of export trading companies, as expressed in H.R. 6016, also concerns us. The Senate bill includes insurance among the services that can be performed by export trading companies; H.R. 6016 does not. It has long been the view of those who support the export-trading company idea that the more nearly an export trading company could approximate a one-stop, comprehensive export service, the more valuable it would be to American exporters. We urge the House conferees to reconsider their views on this point as well.

Having suggested these changes, I should like to reemphasize that we think the Bank Export Services Act is an excellent bill, and we support it.

ANTITRUST

The principal virtue of H.R. 1799 was that it was neither a banking bill nor an antitrust bill but an export-promotion bill. Throughout the history of such legislation, NAM has supported it. The unhappy link between U.S. competitiveness and U.S. antitrust law has been clear for some time. The President's Export Council under President Carter, for example, concluded that: "Every reasonable effort should be made to facilitate U.S. exports and overseas operations by freeing U.S. firms from antitrust constraints or uncertainties where U.S. consumers are not adversely affected." H.R. 1799 and S. 734 are suggestions for achieving just this end.

Under the Senate bill, the Commerce Department is authorized to issue certificates exempting export trading companies from prosecution under antitrust laws. This can be done, of course, only after the Department has thoroughly reviewed an ETC application for such exemption and received the advice of the Justice Department and the Federal Trade Commission on the merits of issuing such certificates. Given the safeguards of the Senate bill, we feel this approach is sensible because it addresses directly the question of uncertainty. Unfortunately, as it now stands, the antitrust language of H.R. 1799 does not. By denying the Secretary of Commerce a meaningful role in the certification procedure the House bill undermines the procedure itself. If it prevails there will be no one in government with an institutional interest in providing the ETC applicant with the certainty about the application of the antitrust laws that is the rationale for this change in the law. The "certainty" is further unraveled by permitting single damage suits, as the House bill does, even for conduct that has been certified as unlikely to violate the antitrust laws. It is our belief that U.S. competitiveness would be better served if the conferees were to favour the Senate bill when they consider the questions: Who should certify, and what degree of antitrust immunity should certification confer?

To repeat an earlier thought, the potential benefit of the ETC legislation now before he House is significant in itself and because it demonstrates our commitment as a nation to solve our trade problems by improving our competitiveness rather than by closing our markets. It appears, however, that the best law is neither in the House nor the Senate but in a judicious melding of the leading proposals of each. We shall, of course, follow closely the work of the conference and look forward to the opportunities this legislation will create for American business.

Sincerely,

LAWRENCE A. FOX.

Mr. BINGHAM. Mr. Speaker, I yield such time as he may require to the gentleman from Ohio (Mr. SHAMANSKY).

(Mr. SHAMANSKY asked and was given permission to revise and extend his remarks.)

Mr. SHAMANSKY. Mr. Speaker, I asked to get on the International Economic Policy and Trade Subcommittee of the Committee on Foreign Affairs because I am very much interested in promoting export of the U.S. industries. But there is a provision in this bill which I deeply regret, and for all the reasons that I am for the bill in general, I think we have to be aware of what is happening in this particular provision.

We had the Secretary of Commerce, Mr. Baldrige, testify that this statute was not intended to exempt the export trading companies that are certified from the application of our antitrust laws domestically, and that was affirmed by his General Counsel, Sherman Unger.

They both stated that, although export trading companies would be exempt from antitrust laws for their foreign activities, export trading companies would not be exempt from domestic antitrust implications of those activities. To underscore our mutual understanding of the purpose of this bill, I offered an amendment in subcommittee which stated that antitrust laws shall apply to conduct having a direct, substantial, and reasonably foreseeable effect on domestic commerce.

The bill before us has a different provision. Rather than applying fully antitrust laws to domestic activities of export trading companies, the bill exempts them from treble damages and provides only single damages.

This means that export trading companies could engage in antitrust activities domestically and the affected domestic competitors would be able to collect only single damages.

This is inconsistent with the assurances that were given to me only last week by the Secretary of Commerce.

I am convinced that in the near future we will see domestic firms damaged, if not destroyed, by actions that, except for the language of H.R. 1799, would have made the perpetrators subject to treble damages. To increase jobs in the export sector, we may be destroying jobs in the domestic sector.

Except for this particular section, I support legislation to expand American exports. I just regret that, in our enthusiasm to expand exports, we may have dealt a serious blow to our antitrust laws.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. SHAMANSKY) has consumed 1 minute.

Mr. LAGOMARSINO. Mr. Speaker, I yield 10 minutes to the gentleman from Illinois (Mr. McCLORY).

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, I rise in support of title II of H.R. 1799, the antitrust provisions, which were referred to the Judiciary Committee and to which the Subcommittee on Monopolies and Commercial Law gave long and careful consideration. There were times when I and others felt that our consideration was becoming altogether too long and too careful, but the bill which we have ultimately reported is a good one, and merits the support of every Member.

It is difficult to discuss this legislation without some reference to H.R. 5235, formerly H.R. 2326, the bill introduced by Chairman RODINO and myself to clarify the application of the antitrust laws to export trade activities. This was our initial response to the complaint that many American businessmen were unwilling or unable to compete with confidence in the international marketplace because of their uncertainty regarding their antitrust liability. That bill reflects our belief that the proper response to exporters who believe the law is unclear is to clarify the law. This, it seems to me, is far more important than the licensing procedures, such as the provisions in the export trading legislation passed by the Senate.

As the Rodino-McClory bill (H.R. 5235) has moved forward, it became evident that nothing less than some sort of certification system was desired by the business community, even if H.R. 5235 were to be enacted clarifying the non-application of our antitrust laws to purely foreign activities. Title II of H.R. 1799 is the Judiciary Committee's considered response. It compares extremely favorably with the Senate approach. I might say, in terms of simplified procedure, expedit-

ed processing and certain results. It provides exporters with a binding advisory opinion on the legality of their proposed conduct, rather than providing an outright antitrust exemption as the Senate bill attempts to do. This eliminates also the cumbersome requirement that exporters establish a special need as a condition precedent to exemption.

The only issue to be decided in processing an application under our bill is whether the proposed conduct is likely to violate the antitrust laws of the United States. The members of the Monopolies and Commercial Law Subcommittee were virtually unanimous, therefore, in deciding that this determination should be made by the Department of Justice rather than by the Department of Commerce. There would seem to be little benefit conferred by an antitrust certificate from the Department of Commerce which the Department of Justice could attack. And it would be wrong to bar the Antitrust Division from exercising its enforcement function, in my opinion, without its first having the opportunity to subject the proposed conduct to antitrust review.

An optional forwarding role for the Commerce Department is allowed, nevertheless, which should encourage the applicant to use that agency's informational and advisory services.

Careful thought was also given to the question of damages which may be recovered by a person injured by an antitrust violation committed by a person acting pursuant to a certificate. There is no question, of course, that treble damages lie for conduct outside of the certificate. It is also possible, however, although unlikely, that certified conduct may result in injury in domestic commerce. Although the administration and the Senate have suggested that certified conduct should be totally immune from liability, the Judiciary Committee of the House firmly believes that single damages are most necessary and appropriate. It is sometimes forgotten that antitrust damages are not only a penalty but a protection, and the person compensated most often will be another American business with a legitimate claim to be made whole for its antitrust injury.

Single damages for domestic injury by the holder of an export trade certificate were perceived as a fair compromise between the traditional statutory treble damages and no damages. If no damages were to be the rule, the governmental agency granting certification would have to be more conservative in close cases, granting benefits to fewer applicants. Furthermore, fairness would also then require that greater procedural protections be provided for interested parties who feared future injury since such parties would subsequently be denied damages.

On the other hand, with single damages as the rule, certification could take place administratively without a hearing, without third parties arguing their case, and thus without protracted delays. Finally, if no damages were to be the rule, the only way a court could compensate the injured American business would be to hold the conduct in question to be ultra vires, outside the certificate, in which case treble damages would lie. With a single-damages rule, however, the court would have a fairer solution available—one which compensates the injured party but does not punish the wrongdoer who believed that his conduct fell within the scope of the certificate.

Some have argued that the Senate bill is preferable because it protects exporters from lawsuits by providing zero damages rather than single damages where certified conduct causes the complained of injury. But our committee has given this argument a long, hard look, talked to antitrust lawyers, and found this argument without merit. For the Senate bill would only change the nature of pleading antitrust violations and probably result in treble damage awards on grounds that the conduct in question was ultra vires. Our bill would preserve and assure single damages for the injured plaintiff but would restrain the filing of lawsuits against exporters by means of the most liberal provision of attorney's fees for defendants within the sweep of my experience. For if the certified conduct has not violated the antitrust laws, the plaintiff must pay to the defendant exporter a reasonable attorney's fee even if the suit was brought in good faith and even if the suit was nonfrivolous. That should make plaintiffs think twice about suing an exporter holding a certificate.

Mr. Speaker, this bill has been carefully constructed to provide greater certainty to exporters by providing them the assurance of an antitrust review and certification procedure. I believe it will enable American businessmen to compete with far greater confidence and freedom of action overseas. This is what you want; it is what I want; and it is what our national interest requires. Having worked this long and come this far, I look forward to an early and successful conference with the other body on this measure, followed by final enactment of this important legislation into law.

Mr. Speaker, at this point I yield 4 minutes to the gentleman from Illinois (Mr. RAILSBACK).

The SPEAKER pro tempore. Without objection, the gentleman from Illinois (Mr. RAILSBACK) is recognized.

There was no objection.

(Mr. RAILSBACK asked and was given permission to revise and extend his remarks.)

Mr. RAILSBACK. Mr. Speaker, I would like to commend the chairmen and members of the committees with jurisdictional interest in the export trading company legislation. I feel that this action we are taking here today represents an extraordinary bipartisan effort on the part of these committees to enact meaningful legislation.

Over a year ago, Secretary of Commerce Baldrige testified before the House Judiciary Committee in favor of export trading company legislation. In his testimony he emphasized the need for the United States to meet the trade challenges of the coming decade. Our trading position in the world markets will be tested by emerging third world countries as well as by those nations which currently are highly industrialized, and we must develop ways to meet these challenges. Export trading company legislation such as we are considering here today would facilitate exporting by small- and medium-sized businesses which previously have not had the resources to engage in this kind of activity.

The certification procedure set up in title II will give assurance to these companies with respect to application of antitrust law. We worked very hard in the Judiciary Committee to set up a certification procedure which would give a role to both the Justice Department and the Department of Commerce. As agreed to by the committee, the primary responsibility is set up within Justice with Commerce assisting. I personally would prefer that the Commerce Department be given an even greater role in the certification procedure. I feel that Commerce traditionally has had the resources and expertise in trade matters and is currently committed to aiding the estimated 20,000 companies which have the potential to engage in export activities.

Mr. Speaker, we are reminded on a daily basis of the trade problems which the United States encounters in the international community. I, for one, feel that it is time that we stop putting barriers up which hinder exporting. With current economic and trade conditions, I feel that it is imperative that the United States pursue an expansionary export policy in the 1980's. Studies such as one done by Chase Econometrics indicate that by 1985, export trading companies could increase GNP by $27 to $55 billion, increase employment by 320,000 to 640,000 workers, and reduce the Federal deficit by $11 to $22 billion. At a time when Congress is grappling with the problems of unemployment and the Federal deficit, this legislation represents a rare opportunity to take some positive action. I urge my colleagues to give it their support.

□ 1340

Mr. McCLORY. I want to commend the gentleman from Illinois (Mr. RAILSBACK) for his major contributions to this legislative product. He and I have worked long and hard in our Judiciary Committee, particularly on title II of this measure, and we are very proud to express our support for the measure before us here today.

Mr. Speaker, I reserve the balance of my time.

Mr. BINGHAM. Mr. Speaker, I yield 10 minutes to the distinguished chairman of the Judiciary Committee, Mr. RODINO.

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. Mr. Speaker, I rise in support of H.R. 1799. The Committee on the Judiciary has devoted a great deal of time and energy to writing this legislation, and it has the bipartisan support of our committee. Particularly noteworthy have been the efforts of the distinguished ranking minority member of the committee, Mr. MCCLORY, and the gentleman from New Jersey (Mr. HUGHES). They worked hard to reconcile the competing policies and to fashion appropriate compromises.

The concept of export trading company legislation first gained significant support during the Carter administration. The legislation we bring forth today is grounded in legislation proposed in the 96th Congress and refined in this Congress.

The changes in the antitrust laws in this legislation are based on a preception in the business world that those laws inhibit export trade in American goods and services. A number of witnesses in hearings of the Subcommittee on Monopolies and Commercial Law testified that they believed the antitrust laws inhibit American exports by forbidding joint export activity that produces economies of scale. In addition, there is some legal uncertainty about the domestic effects necessary for U.S. antitrust law to apply. According to testimony before the subcommittee, these problems are most acute for small- and medium-sized businesses, which most need to engage in joint activities to overcome the obstacles to export and which can least afford expert antitrust counsel.

Competing with the need to clarify the application of the antitrust laws on international transactions is the need to preserve our system of free competition here at home. As the Supreme Court has pointed out, the antitrust laws protect our economic freedom just as the Constitution protects our political and personal rights and freedoms. A proposal that weakens the antitrust laws must oe approached carefully.

Our task, then, was to find ways to remove antitrust uncertainty from international transactions without weakening our domestic competitive system. We have considered a number of solutions. A remedy that I believe will solve the problem, which the committee has also approved, is to clarify the jurisdiction of the Sherman and FTC Acts and section 7 of the Clayton Act. H.R. 5235 embodies this approach, and the committee will be bringing it to the floor shortly.

H.R. 1799 provides a second important approach, procedural in nature. The basic concept is that a person who is contemplating or engaged in international joint conduct my apply to the Government for a certificate covering the conduct. Under H.R. 1799, as introduced, the Secretary of Commerce, after consultation with the Department of Justice and the Federal Trade Commission, would determine whether to grant an exemption from the antitrust laws under an expanded Webb-Pomerene Act. If the Attorney General or the Federal Trade Commission objected to granting the certificate, either could sue for injunctive relief after the certificate had been issued. No relief whatever would be available to private parties.

As more fully detailed in the committee report, many witnesses and observers believed these procedures were cumbersome, afforded illusory protection to the applicant, and, could, if misapplied, undermine competitive principles in the domestic economy. The committee, working in a bipartisan manner, has established procedures that address these concerns. As reported, title II contains a certification procedure that will let applicants know where they stand swiftly and certainly, with a minimum of bureaucratic redtape. Under the committee version, there is no need for extensive consultation among agencies and department. Decisionmaking authority lies exclusively in the Department of Justice, which should be able to provide detailed expert opinions expeditiously. Under the committee version, a certificate would be issued solely on the judgment of whether the proposed conduct would likely lead to a violation of the antitrust laws.

A certificate would largely immunize the certified conduct from antitrust attack. A certificate would protect the holder from all criminal liability, from actions for monetary relief by the Federal Government, from treble damages, and from injunctive relief in prlvate actions based on threatened harm. The committee version leaves intact liability for single damages and injunctive liability in private cases where actual harm can be shown. In order for the certification procedures to be informal, straightforward, and expeditious, and for the Department's grants of certificate to be unreviewable, it is essential for these remedies to remain intact so that innocent competitors and consumers are not injured by actual antitrust violations.

Mr. Speaker, the suspension version of this bill is not identical to the version the committee reported. The differences are set forth in my additional views in the committee report.

Mr. Speaker, the committee amendments have the bipartisan support of the members of the committee. They are sound, workable procedures. I urge the Members of this body to support them.

I also want to commend the gentleman from New York (Mr. BINGHAM) who has been managing this measure on behalf of the Foreign Affairs Committee, and the gentleman from Washington, Mr. DON BONKER, who has for a long period of time continually urged us to bring this measure to the floor.

I particularly want to pay tribute for their long and studied efforts in this area.

I also want to thank the members of the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary because there were many prickly questions which we had to deal with, and they have all been resolved now.

Mr. Speaker, I also want to mention an individual who gave yeoman service in the committee and that is the gentleman from New Jersey (Mr. HUGHES), a member of the subcommittee.

I would urge that we adopt this resolution.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I would yield to another member of the subcommittee, the gentleman from Ohio (Mr. SEIBERLING), who has worked very diligently in this effort.

Mr. SEIBERLING. I thank the chairman for yielding.

I think this bill, as amended by the Judiciary Committee's amendment, is a distinct improvement. I commend the committee for its action, even though, as set forth in my additional views in the committee report, I feel that it is premature and that we should have waited until sufficient time has elapsed after we pass H.R. 5325, which exempts export and foreign trade from the antitrust laws. If that bill works as hoped, this bill may not be necessary.

I would like to ask the chairman a question that I know is troubling some of the Members. One of the sections of this bill, section 207, provides that anyone who receives a certificate from the Attorney General that the proposed actions do not violate the antitrust laws can henceforth not be sued for treble damages under the antitrust laws for any action that is within the scope of the facts set forth in the certificate.

The purpose of that provision, as I understand it, is to make it possible for businessmen to feel secure against the possibility that, despite the fact that the Attorney General did not feel that the proposed action would violate the antitrust laws, some court might later have a different view.

But I believe we should have the chairman's assurance that this is not an invitation to the Attorney General to be lax and give a blanket kind of certification to create an umbrella of protection from the antitrust laws.

Mr. RODINO. I want to assure the gentleman, who as a member of the subcommittee knows our one objective was to have the Department of Justice, which has overall jurisdiction in

this area of antitrust. insure that that would not be the case, that there certainly would not then be an invitation to violations.

I would also add that the chairman of the committee intends to take up H.R. 5235, which was a bill the gentleman form Illinois (Mr. McCLORY) and myself originally designed and which was joined in unanimously by the rest of the subcommittee.

Mr. SEIBERLING. I thank the chairman.

As I read the committee report, the Attorney General will be under a very strong mandate to insure that no certification is given unless he is satisfied that the proposed act does not violate the law.

Mr. RODINO. That is the reason for designating the Department of Justice rather than the Department of Commerce as the agency that would supervise reviews.

Mr. RODINO. Mr. Speaker, I yield the time I have left, 3 minutes, to the gentleman from New Jersey (Mr. HUGHES).

The SPEAKER pro tempore. Without objection, the gentleman from New Jersey (Mr. HUGHES) is recognized.

There was no objection.

Mr. HUGHES. Mr. Speaker, I want to commend the Judiciary Committee particularly the distinguished chairman of the Judiciary Committee, the gentleman from New Jersey (Mr. PETER RODINO) as well as the ranking minority member of the Judiciary Committee, the gentleman from Illinois (Mr. McCLORY), for making certain that this legislation moved through the committee expeditiously.

I also want to commend my good colleague and neighbor from Washington (DON BONKER), for his work on the Committee on Foreign Affairs, because I know this has been one of his top priorities. He has done an outstanding job in monitoring this legislation through four different committees.

I likewise want to commend the Committee on Ways and Means and the Committee on Banking, Finance and Urban Affairs for their prompt and diligent attention to this legislation.

Mr. Speaker, having been active in the negotiating process that led to this bill and having offered the amendments at the subcommittee and committee levels that were ultimately adopted, I am delighted that H.R. 1799 has reached the floor of the House.

During our information-collection process, it became clear that any certification procedure had to be swift and simple to be of practical value. The amendments that are offered here today possess those qualities. By reducing the number of Government departments and agencies with a role in the decisionmaking process from three to one, the amendments eliminate any duplicative review, the need for interagency coordination, and the possibility of conflicting governmental viewpoints.

Moreover, there can be no doubt that the Department of Justice, because of its responsibility to enforce the antitrust law, and its expertise in doing so, must be the agency with decisionmaking authority. There was unanimity in the hearing process that the Department of Justice had to have some role in the certification process to protect competitive values. The committee amendments, which transfer decisionmaking authority to the Department of Justice, do not therefore contemplate a role for the Department of Justice where there had been none.

I believe that the business community will be pleased with the committee amendments. With its great experience, the Department is in a position to make quick, accurate determinations. Because the Department of Justice will have the responsibility of making decisions, it will have to be as careful and attentive as possible and will not be free to casually dissent from the decisions of another department. The committee expects that the Department will discharge its responsibilities with a view toward the principal purpose of the legislation—to promote exports.

Finally, the procedures that the committee has recommended contain few formalities. They are designed to work as informally and expeditiously as possible. Because they contain few procedural protections for the rights of persons who would be injured by any antitrust violation, the committee amendments leave a single damage remedy to anyone who actually has been injured by an antitrust violation and an injunctive remedy to anyone who can show actual harm. If these remedies were unavailable, elaborate procedural safeguards that would likely lead to extended administrative proceedings would be necessary to make certain that domestic competitors and consumers would be unaffected by the conduct for which certification was sought.

Mr. Speaker, the procedures under consideration here today are moderate and workable. I heartily support H.R. 1799 as amended and urge my colleagues to join me in voting for it.

□ 1350

Mr. RODINO. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington (Mr. SWIFT).

(Mr. SWIFT asked and was given permission to revise and extend his remarks.)

The SPEAKER pro tempore. Without objection the gentleman from Washington (Mr. SWIFT) is recognized.

There was no objection.

Mr. SWIFT. Mr. Speaker, the current recession has jarred thousands from their jobs across our country and has shaken our economy to its foundation. The current economic crisis is in part due to the large trade imbalance that our country suffers from. It must be remembered that our first trade deficit occured in only 1971.

To be sure a large part of the foreign trade imbalace is due to our ever-increasing dependence upon imported oil. But in addition our exports have fallen far behind those of the other developed countries. The United States exports only 8 percent of its GNP, as compared with Japan's 12 percent and West Germany's 23 percent. Only 10 percent of the 250,000 manufacturing firms in the United States currently export, and or those exporting firms fewer than 1 percent account for 80 percent of our exports. This is a situation that must be addressed. Exports directly translate into jobs here in America where we desperately need them. According to the Commerce Department, there are as many as 30,000 small- to medium-sized firms that could be competitive in the export market but that simply are not competing worldwide.

The bill under consideration today, H.R. 1799, address two of the major problems faced by small companies dealing with the uncertainty of the export market; the access to capital and financing and the uncertainty of our antitrust laws. The concept of the Export Trading Company has strong support in the business community. In a recent export trade questionnaire I sent to major exporting companies in my district, 79 percent of those responding favored the creation of ETC's. Further, 81 percent favored the participation of banks in making capital and credit available to companies wishing to participate in an export trading company.

The vaguely worded Webb-Pomerene Act has been in existence since 1918, allowing U.S. firms to form associations strictly for the purpose of exporting goods without fear of antitrust prosecution. Clearly the law needs to be addressed. In the 1930's there were as many as 57 Webb-Pomerene associations accounting for some 19 percent of the total U.S. exports. By 1979, however, that number had declined to 33, accounting for less than 2 percent.

Title II of H.R. 1799 amends Webb-Pomerene to include export trading companies, and the export of goods and services. This would do much to remove the uncertainty of our antitrust laws, and would encourage the formation of export trading companies which would assist small firms to begin exporting.

It is essential that the United States increase its role in the worldwide export market—both to assist in the current domestic crisis and even more importantly to help America regain its leadership role in the world economy. I believe H.R. 1799 could help a great deal and urge my colleagues to support it. Thank you, Mr. Speaker.

Mr. RODINO. Mr. Speaker, I urge the Members to adopt this measure.

Mr. Speaker, I yield back the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield 3 minutes to the gentleman from Minnesota (Mr. FRENZEL).

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Speaker, after years of endeavor, I am delighted that the House will finally, I believe, pass the two bills on its schedule today which jointly will become the House version of a trading company bill.

This legislation, which I have supported since its conception, I think will be helpful in assisting the export needs of smaller and middle-sized companies, many of which do not have either the inclination or the capability to export at the present time.

As we have come closer and closer to the passage of this bill, I have noticed in my district increased interest in this kind of bill, and I suspect that other have experienced the same in their areas.

I welcome the passage of the bill. I think it is important that the Congress tell its constituents that we are concerned with increasing exports. This bill gives a little additional, very modest incentive to encourage exports.

The United State has stood almost alone among trading nations in its unwillingness to provide this sort of assistance to exporters. This bill is a very tiny first step, but I hope that it will lead the way to further developments of other GATT legal export incentives for American exporters.

Mr. Speaker, I do not think this bill is perfect. We have had three committees laboring to produce two bills. The result is not exactly a camel, but it is not a racehorse either.

We can stand to make many impovements. In my considered judgment, neither of these bills handle the problem nearly as well as it is handled in the other body. We have heard reference to the fact that the Attorney General will be the sole arbiter of certification. In my judgment, the Senate version, which gives that role to the Secretary of Commerce, is a far better solution and would seem to me to do much more to expand U.S. exports.

If we worry so much about our antitrust laws, we can probably arrange to see that we do not increase exports. That is, in fact what we have been doing over these past many years.

Nevertheless, I must compliment all of the committees concerned and all of the Members concerned for a good job. It is a modest beginning, but it is a very necessary beginning.

Mr. McCLORY. Mr. Speaker, may I just say, with respect to the subject of the antitrust laws, that I do not think they have been an impediment. As a matter of fact, a recent study of export distincentives published by the Department of Commerce and the Office of the Special Trade Representative expressly stated that no specific instances were found of the antitrust laws unduly restricting exports. I think it is an erroneous perception that the antitrust laws are an impediment that has been the problem, and as part of that the antitrust laws themselves have been misconstrued, misinterpreted, and misunderstood. At any rate, we are endeavoring in this measure and in the measure that the gentleman from New Jersey (Mr. RODINO) and I are sponsoring to assure that, with respect to export activities, American businessmen will be able henceforward to compete with greater confidence and freedom of action in the international marketplace. I think that is an objective on which we all can agree.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. ZABLOCKI), the chairman of the Committee on Foreign Affairs.

(Mr. ZABLOCKI asked and was given permission to revise and extend his remarks.)

Mr. ZABLOCKI. Mr. Speaker, H.R. 1799 has been brought to the floor only with concerted efforts of a number of Members of the House. It has been the persistence of Mr. BINGHAM, chairman of the Subcommittee on International Economic Policy and Trade, and Mr. BONKER together with the ranking minority member of the subcommittee, Mr. LAGOMARSINO, that has kept this bill moving over for 2 years and has finally brought it to the floor through a labyrinth of committees.

The chairman of the Judiciary Committee, Mr. RODINO, and his ranking member, Mr. MCCLORY, have been most cooperative in moving the legislation. In addition to reporting the antitrust title of H.R. 1799, they have reported companion legislation, H.R. 5235, which makes an important contribution to the efforts to facilitate the formation of export trade associations.

The third portion of the package rested with the Banking Committee. The chairman, Mr. ST GERMAIN, and the ranking member, Mr. STANTON, of Ohio took the lead on the issue in that committee, which has reported its version of the banking title of H.R. 1799, as H.R. 6016, which is also before the House today.

Mr. Speaker, this legislation is designed to facilitate the formation and financing of export trading companies and associations by creating an office within the Department of Commerce and by appropriately amending the banking and antitrust laws.

In this time of economic dislocation both domestically and internationally, I hope Members will see fit to support this effort to encourage U.S. exports and U.S. employment.

Mr. Speaker, I urge the adoption of H.R. 1799.

Mr. McCLORY. Mr. Speaker, I commend the gentleman from Wisconsin (Mr. ZABLOCKI) and all the Members of the Foreign Affairs Committee for their major contribution in this legislative product.

Mr. Speaker, I yield back the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield 1 minute to the gentleman from Missouri (Mr. EMERSON).

(Mr. EMERSON asked and was given permission to revise and extend his remarks.)

Mr. EMERSON. Mr. Speaker, American goods and services can be competitive with anything in the world market today if we afford our businesses the same kind of opportunities that our trading partners give their companies.

Passage of the Export Trading Company Act would give U.S. firms just such a weapon to compete more effectively in the increasingly aggressive world trade market. By allowing limited bank participation in export trading companies under strictly regulated conditions, and by providing a preclearance certification process to give participating businesses the assurance that their activities and methods of operation would not be in violation of the antitrust laws, smaller firms would be given a significant inducement to begin exporting their goods and services for the first time.

These firms have not exported until now for a variety of reasons. They are not familiar with foreign customs, language, and markets. They do not have the expertise to provide the necessary export services. Perhaps most importantly, they do not have the capacity to bear the tremendous costs and risks involved in developing overseas markets. Export trading companies will be able to help these U.S. companies over these hurdles by diversifying trade risks and achieving economies of scale in export services.

And the bottom line, Mr. Speaker, is job creation, thousands of new American jobs. In Missouri alone, the Commerce Department estimates that between 4,500 and 6,000 new jobs will be created as a direct result of passage of this legislation.

The House has before it today legislation to facilitate the formation of export trading companies. I am pleased to support this important legislation.

Mr. LAGOMARSINO. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. ROTH).

(Mr. ROTH asked and was given permission to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, all of us are concerned about our Nation's economy. We recognize that the current rate of unemployment is unacceptable and that the decline in business activity must cease.

Yet we also know that quick-fix solutions and Government bailouts will not bring about a lasting solution.

What we must do is restore economic incentives and remove inpediments that arbitrarily retard economic activi-

ty. That is exactly why this is such an important bill. It will help American business to compete in the international marketplace and will enable thousands of our Nation's businesses—who are not now exporting—to get into the export marketplace.

This month I hosted a half day conference on exports in my home State of Wisconsin. Some 300 persons attended, largely drawn from small and medium-sized businesses not currently involved in the export trade. These are exactly the types of companies that will benefit from this legislative initiative.

During our conference, our keynote speaker, Assistant Secretary of Commerce William Morris, explained to the audience the importance of the bill that we have before us today. I have long supported this bill—but what really opened my eyes to the necessity for this legislation was Secretary Morris' statement that the third largest export trading company in America today is a Japanese firm.

The benefits of exporting are well known to my colleagues here in the House. Already, some 8 percent of our Nation's $3 trillion economy is derived from our exports. Hundreds of thousands of Americans are employed in export related jobs, and an additional 32,000 jobs are created by every additional billion dollars in American exports.

Yet it is easy for us to say to American business: "There are millions of dollars in potential sales overseas—go and make those sales." International marketing is difficult and does require special skills. This is an area in which small- and medium-sized businesses lack necessary abilities—and by virtue of their size, they simply cannot afford to obtain the specialized type of information and people that they need in order to compete overseas.

By passage of this legislation, we will remove the barrier that is imposed by the fact that most of our Nation's businesses fall within the category of "small" or "medium." This bill will let those companies pool their resources, entering jointly into the worldwide market.

American products and technology are competitive with those produced anywhere else in the world. The foreign buyer wants to "buy American" because the label "Made in the U.S.A." stands for quality and reliability. Yet we cannot sit back and expect that buyers are going to come knocking at our door. Our free market system is such that our businesses must get out and make the sale, convincing the foreign buyer to buy from us, rather than from Britain, France, Japan or some other supplier. Given the choice, I am confident that many will opt for the American product—but as it stands now, all too frequently we have not even been giving the foreign purchaser the opportunity to buy American.

Through export trading companies, that situation can be corrected. This legislation can open many new doors to hundreds of thousands of America's businesses. It will help our export competitiveness—and will create tens of thousands of new jobs here in America.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. ROTH. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding.

Mr. Speaker, I rise in ardent support of this bill.

Our chairman of the Committee on Foreign Affairs has spoken of the committee's great concern. I know it, also, from the small businesses in my district. They have been warned by the Department of Justice that, when they wish to get together to make trading companies for export, there may be some antitrust legislation that forbids this kind of thing.

We are getting more and more of our small companies into export, which is so important a development—American jobs paid for with foreign currency.

The Webb-Pomerene Act of 1918 did not repair the damage that was done to our small companies in export trade.

• Mr. SMITH of New Jersey. Mr. Speaker, one of the most positive ways in which the United States can seek to correct our economic problems is by taking steps to increase our export trade. I rise in support of the Export Trading Company Act, which will provide the needed stimulous to expand our foreign markets—a key to increased national production and the creation of new private-sector jobs.

I have long believed that the expansion of small business is the key to turn the burden of unemployment in our Nation around. The small businesses of this country already provide 86 percent of the new jobs created in our economy and over half of the private sector gross national product. However, it is evident that many of these companies are in need of new markets in order to maintain present production levels—small businesses in our Nation are failing at a rate of 25,000 per year.

Based on a Department of Commerce study, we now have the opportunity to expand the market for small business production and turn these distressing figures around. It is estimated that at least 20,000 small- and medium-sized companies would export if they had access to marketing financial and informational export services. Mr. Speaker, this bill would provide these vital services.

Today, foreign trade is dominated by the largest U.S. corporations—with 1 percent of U.S. firms responsible for 80 percent of all exports. At the same time, the United States has amassed nearly $150 billion in trade deficits. In addition, the U.S. share of total world markets has declined from 15 to 12 percent since 1970.

The solution to these problems, Mr. Speaker, is to open the world market up to the most innovative and productive sector of our economy—small business. I firmly believe—once the foreign markets are tapped for smaller U.S. companies—we will see increased employment, a boom in our national output of goods and services, and we can finally make positive inroads to decrease our looming trade deficits.

Secretary of Commerce, Malcolm Baldrige, put the export trade issue in perspective when he testified before a congressional committee last year:

> We need export trading companies that provide a full range of export services to firms of any size interested in exporting. These export companies must be sufficiently capitalized to allow operations on a scale that would achieve substantial economies in selling and distributing.

Mr. Speaker, thousands of small businesses market exportable goods and services, which could easily compete in foreign markets. Most of these companies, however, have no international experience and lack of knowledge about foreign markets. Perhaps even more important, small businesses are chronically short on capital—and a large supply of capital is necessary for successful involvement for trading in foreign markets.

The bill before us today will enable small businesses throughout the Nation to expand by taking part in world trade. It will draw on the considerable resources and expertise of the U.S. banking system to increase the amount of available external financing. It would use the network of established contacts with overseas companies, knowledge of foreign markets, economic conditions, and trade regulations which are already being used by larger U.S. corporations to expand overseas production.

Mr. Speaker, I strongly join with the administration in supporting this—the first legislation in over a decade aimed at giving American business major new tools to penetrate and expand export markets abroad.•

• Mr. HAMMERSCHMIDT. Mr. Speaker, as a cosponsor of H.R. 1799, the Export Administration Amendments Act, I rise to express my strong support for this measure to encourage the development of export trading companies as middlemen to help small- and medium-sized U.S. firms sell their goods abroad. I commend my colleague, Congressman BONKER, chairman of the House Export Task Force, for his tireless efforts to insure passage of this critical bill which has been severely hampered by overlapping committee jurisdictions. I have long been enthusiastic about legislation to promote trade. Overseas trade is vital to the American economy. It is estimated that one out of eight jobs in the United States is directly dependent on exports, and that approximately $1 out of $3 of U.S. business profits is derived from international activities.

Trade is even more important for the agricultural sector, where 1 out of every 4 acres of cropland now produces for export. The continued expansion of foreign trade constitutes a major underpinning of American domestic prosperity.

Small businesses which desire to export are often sidetracked by the tremendously burdensome requirements of such an effort. Gaining an expertise in foreign markets, tax provisions, freight handling, and business customs requires an indepth study and is tremendously time consuming. Whether selling directly or through an agent abroad, the small business also has to worry about export packing, long-distance multishipper transportation, export and import licenses, lack of trustworthy credit information, paper processing, payment insurance costs, and similar followup and detail work. A small business cannot afford the large in-house international marketing staff which would be required to handle all aspects of a successful export effort.

Because of these difficulties, many small suppliers turn to export management firms to handle their foreign sales. The majority of these professional middlemen operations are too small to handle more than one or two accounts competently. They also lack the management and capital necessary to expand geographically and to establish sales offices overseas. So, even if the export management firm is the best channel for a small supplier interested in exporting, he may still be frustrated in his export efforts. Government export promotion programs have not been successful in filling this information gap or in providing the type or level of assistance necessary to aid small business exporters. Export association and trading companies currently in existence, while providing an alternative to direct exporting by small business, have been hamstrung by certain legal restrictions and ambiguities.

Congress has done very little to promote the exports of U.S. goods and services. The vast internal American market and a rich endowment of resources have enabled the Nation to remain relatively self-sufficient. Global events of the past decade, however, have led to dramatic changes. In 1970, for example, exports and imports of goods and services represented only 6.6 and 5.9 percent of U.S. GNP, respectively. By 1980, both exports and imports had grown to over 12 percent of GNP. These figures illustrate the Nation's growing interdependence on the international economy and the importance of international trade to the expansion of the American economy. If the United States is to compete effectively in world markets, it must adopt policies that promote exports without abandoning the principles of the free market system. Export growth is clearly an increasingly important part of a healthy U.S. economy, yet the United States not only does little to spur exports, it actually erects barriers to increasing exports.

Unfortunately, Federal laws and regulations limit our ability to respond effectively to these new challenges. For example, Government regulations prevent U.S. banks from offering many important trading services. In addition, antitrust uncertainties deter many U.S. firms from cooperating with other U.S. producers in their organization of export activities. They hamper American firms at a time when foreign governments are cooperating with and, in many instances, even subsidizing and directing the export efforts of their own firms. The result is that our unilateral export restrictions cost American businessmen opportunities abroad and cost American workers jobs at home.

One way in which we can do this is by facilitating the formation of trading companies. The trading company is not a new idea. It is as old as commerce itself and has enjoyed great success in other countries. In Japan, for example, the top 10 trading organizations, the Sogo Soshas, account for approximately 60 percent of Japan's imports and 50 percent of its exports. Trading companies have also played an important role in the economic growth of Many European countries. Yet, despite their historical and international success, trading companies have not flourished in the United States. The bill before us attempts to improve this situation. It makes possible the formation of American export trading companies to deliver the output of small- and medium-sized American businesses to the marketplaces of the world.

I must point out that even though U.S. exports have grown in the 1970's from 4.3 percent of our GNP to 8 percent today, we are in fact losing ground in the growing overseas markets. The U.S. share of the total world market in 1970 was 15 percent; in 1980, it was 12 percent. The U.S. share of the manufactured goods total world market has gone from 21.3 to 17.4 percent.

Every other major trading nation not only permits but encourages the formation of export trading companies or their equivalent. Only the United States has failed to allow the development of this mechanism for aiding smaller firms who either cannot or will not enter the world marketplace on their own.

It appears that the export trading company will be the major export-expanding statute that can be enacted this year. Its passage today requires the active support of all Members of Congress concerned with the balance-of-payments problem and its implications for the economic, political, and military future of the United States.●

● Mr. SOLARZ. Mr. Speaker, exports—and the need to increase our export performance—are on everyone's lips these days. U.S. merchandise trade never showed a deficit before 1971, slipped into a deficit totaling $5 billion during 1971-76, and then plunged into deficits of over $25 billion per year in 1977, 1978, 1979, 1980, and 1981. To be sure, this is in some measure due to our enormous oil bill ($79 billion in 1980), but our relative share of world markets has gone down, too.

What are the reasons for this decline, and what can be done to reverse it? Some of the change is due to relative losses in U.S. productivity and the general improvement in the economic standing of other industrialized nations. Part of the problem, though, has been the unwillingness of the Federal Government to remove disincentives to exports and to do what it can to encourage American businesses to seek overseas markets. H.R. 1799, as reported by the Committee on Foreign Affairs, would remove several of these Government-imposed limitations and give small- and medium-sized businesses the chance to sell overseas free of some of the disincentives that have made them easy pickings for their Japanese and European competitors.

Of the 250,000 businesses in this country, only about 8 percent export, and about 100 companies account for half of all our exports of manufactured goods. Studies have indicated that an additional 20,000 small- and medium-sized businesses might export profitably if given the tools and incentives to do so. These kinds of firms, though, usually have limited financial and personnel resources. They do not know how to find and evaluate foreign markets and, even if they did, they could not afford to commit the resources or secure the credit that would allow them to exploit foreign sales opportunities. Firms such as these could conceivably work together, pooling their resources to reach overseas, but the uncertain application of our antitrust laws makes such activity risky at best.

The measure before us would give export trading companies access to the kind of information about, and contacts with foreign markets that are essential for success in international trade and would provide certainty for exporters' antitrust exemptions. The struggle being waged in the House over this bill is a classic example of the need to look at traditional domestic regulatory philosophies in light of today's global economy.

EXPORT TRADING COMPANIES

The bill would encourage the formation of export trading companies—ETC's. Although there are nearly 4,000 export firms in this country, 92 percent employ less than five people and almost all limited to a single product line or geographical area. Like the small- and medium-sized businesses at which the export trading company bill is directed, these export firms have not been able to secure lines of credit

adequate for financing exports on a large scale.

ETC's would be able to offer expertise and economies of scale in financing, related credit services, market analysis, distribution channels, compliance with United States and foreign import-export regulations, advertising, accounting, overseas offices, transportation, insurance, and warehousing. They could handle a wide range of products and could offer "one-stop shopping" for the less-than-giant businesses that are the heart of the American economy. The bill would make this possible through two changes in Federal law, one substantive, the other procedural.

BANKS AND EXPORT TRADING COMPANIES

Banks have a unique ability to provide what ETC's need to succeed—international correspondent relationships, knowledge of foreign markets, extensive operations and communications systems, financing and related services, knowledge about foreign currency transactions and the kind of managerial expertise necessary for such operations as large-scale inventory control. In addition, they have an image with potential foreign purchasers that a small commercial exporter does not.

Generally, Federal law forbids banks from having equity positions in commerce. This separation, which our European and Japanese competitors are not required to observe, arises from fears about the safety of the depositors' funds. As a result, American banks are forbidden to invest in ETC's. Over the years, though, Congress has made exceptions to the banking—commerce separation that meet needs no more pressing than our need to export. Among these are laws permitting bank investment in community development corporations, small business investment companies and other entities that are not strictly "banking" in character. Bank holding companies are permitted to make small investments in nonbanking entities, but for the most part, only large banks are affiliated with holding companies.

The bill addresses this problem by permitting bank holding companies and Edge Act corporations to own and operate ETC's. The Federal Reserve Board, however, would maintain strict control over such investments. Any bank holding company on Edge Act corporation investment in an ETC would have to be approved in advance by the Fed. No ETC owned wholly or partly by a bank holding company on Edge Act corporation would be permitted to speculate in securities or commodities, and no bank could have more than 5 percent of its consolidated capital and surplus invested in ETC's.

ANTITRUST IMMUNITY

The bill before the House would make a procedural change in Federal law relating to antitrust immunity for exporters. As far back as 1916, the Federal Trade Commission recommended antitrust immunity for American businesses selling overseas. The Webb-Pomerene Act, enacted in 1918, provided antitrust immunity for export trade in goods, so long as such activity did not restrain trade or depress prices within the United States. The theory of Webb-Pomerene was to allow firms that could not act in concert in the domestic market to pool resources and assist one another in selling abroad. Webb-Pomerene got off to a good start, and by the early 1930's. Webb-Pomerene associations accounted for almost 20 percent of American exports. The heaviest representation was of relatively homogeneous exports like agricultural commodities, minerals and textiles.

Today, however, the story is far different: Webb-Pomerene associations account for only about 20 percent of our exports. Of the 150 associations created since 1918, only 33 survive (and only a few of these are substantial exporters). Probably the most significant reason for the decline of Webb-Pomerene associations was a series of challenges on antitrust grounds, brought both by the U.S. Government and by private parties.

Although Webb-Pomerene purports to provide antitrust immunity for export activities, there is no objective, certain measure upon which a company or group of companies can rely. If the Justice Department, the FTC or a private individual believes that the activities of a Webb-Pomerene association has had a forbidden domestic effect, Justice, FTC or the individual may sue the association and its members under the U.S. antitrust laws (and Justice may prosecute criminally under the Sherman Act). Years of expensive litigation can ensue—and have ensued—before the courts finally determine whether the law was violated or, as is more likely, before one side becomes exhausted and settles.

Few businesses—particularly the small- and medium-sized businesses that Webb-Pomerene is designed to help—are prepared to operate in the face of this kind of uncertainty. If we really wish to offer antitrust immunity that is worth something, certainty is needed before a firm makes the considerable investment involved in entering the export market. H.R. 1799, as reported by the Foreign Affairs Committee, would provide this kind of certainty without significantly expanding the substantive exemption enacted in 1918. Under the bill, an ETC would apply to the Commerce Department for a certificate of antitrust immunity. The application would contain a complete description of the company and its proposed exporting activities, and Commerce would consult with the traditional guardians of the antitrust laws, Justice and the FTC, before issuing a certificate. The certificate would immunize only those activities described in the application. The big difference, of course, is that exporters would know for certain that "the water's fine" before plunging in, as private parties would not have standing to challenge the activity covered by the certificate and any suit by justice to revoke it would have only prospective effect.

In addition, the bill would amend the Webb-Pomerene Act to make the antitrust exemption applicable to services as well as goods. Services constituted a relatively small portion of our exports in 1918, but by 1980, they made up one-third of total U.S. exports. This change in Webb-Pomerene would allow ETC's to provide—either solely or in concert with sales of goods—such services as accounting, banking, insurance, construction, and *engineering*.

THE COUNCIL FOR EXPORT TRADING COMPANIES

I am pleased to observe that this legislation already has generated considerable interest in the American commerical and financial communities. Recently, a number of agricultural, manufacturing, banking, and shipping entities joined to form the Council for Export Trading Companies, or CETC. I applaud the formation of CETC and hope that it will play an active role in assisting potential American exporters to make use of the changes that will be wrought by this legislation.

CETC has been formed for several reasons. First, many of the potential beneficiaries of the ETC legislation do not know what the bill provides and can do for them. One activity of CETC will be to provide information about the ETC legislation and the ETC concept to business people and bankers who might wish to establish or otherwise become involved in ETC's. CETC also will be providing continuing information to its members on ETC-related developments.

Second, although CETC will not be a lobbying organization, it may become involved in the legislative process by providing witnesses and information to the Congress. CETC also will have the capacity to serve as a liaison between its members and such Federal regulatory entities as the Commerce and Justice Departments, the FTC, and the various bank regulatory agencies. This will be of use not only during the development of ETC regulations by these agencies, but also in the process of filing and securing approval for ETC applications once the regulations are in place. Some of the agencies that will regulate ETC's have expressed institutional hostility toward the ETC concept. CETC will work for the creation of a regulatory environment that reflects the strong support for the ETC legislation in Congress and the American business and banking communities.

Third, and perhaps most important, CETC will be one place where potential participants in ETC's—bankers, business people, freight forwarders, and so forth—can come together.

The mere passage of this legislation will not result in the instantaneous

formation of hundreds of ETC's. The process will take time. It will involve the education of both potential ETC participants and Government regulators, the coming together of potential ETC participants, and the often tedious process of securing the approval of Federal regulatory agencies. CETC can and should fill the role of helping to carry out these tasks and making the ETC concept a reality that can give a boost to American exports.

The international trade aspects of our economic problems are many, varied, and substantial. Enactment of this bill will not solve all of them, but it will begin the process by breaking two shackles that needlessly hinder American exports.

The SPEAKER pro tempore. All time has expired.

The question is on the motion offered by the gentleman from New York (Mr. BINGHAM) that the House suspend the rules and pass the bill, H.R. 1799, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill as amended, was passed.

The title was amended so as to read: "A bill to encourage exports by establishing in the Department of Commerce an office to promote the formation of export trade associations and export trading companies, by facilitating investment in export trading companies by certain banking institutions, and by modifying the application of the antitrust laws to certain export trade, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BINGHAM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

BANK EXPORT SERVICES ACT

Mr. ST GERMAIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6016) to permit bank holding companies and Edge Act corporations to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions, as amended.

The Clerk read as follows:

H.R. 6016

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Bank Export Services Act".

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 2. Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

"(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

"(ii) The period for disapproval may be extended for such additional thirty day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

"(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(iv) The Board may disapprove any proposed investment only if—

"(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

"(II) the financial or managerial resources of the companies involved warrant disapproval; or

"(III) the bank holding company fails to furnish the information required under clause (iii).

"(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

"(vi) A proposed investment may be made prior to expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

"(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

"(ii) No provision of any other Federal law in effect on the date of the enactment of this paragraph relating specifically to collateral requirements shall apply with respect to any such extension of credit.

"(iii) No bank holding company which invests in an export trading company may extend credit or cause any subsidiary to extend credit to any export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(C) For purposes of this paragraph, an export trading company—

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

"(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification, including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

"(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

"(E) For purposes of this paragraph—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State and which is organized and operated exclusively for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. Any export trading company may perform such importing or other activities as are reasonably related to and incident to an export transaction, if the overall effect of such activities is to enhance the exportation of goods or services produced in the United States;

"(ii) the term 'export trade services' includes consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation (including trade documentation and freight forwarding), communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when such services are provided in order to facilitate the export of goods or services produced in the United States;

"(iii) the term 'bank holding company' shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank owning stock in a bank described in this clause that invests in an export trading company shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

"(iv) the term 'extension of credit' shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.".

BANKERS' ACCEPTANCES

SEC. 3. The seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372) is amended to read as follows:

"(7)(A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as 'institutions'), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

"(i) which grow out of transactions involving the importation or exportation of goods;

"(ii) which grow out of transactions involving the domestic shipment of goods; or

"(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

"(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this paragraph.

"(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

"(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

"(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this paragraph shall apply.

"(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Rhode Island (Mr. ST GERMAIN) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. STANTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Rhode Island (Mr. ST GERMAIN).

□ 1400

Mr. ST GERMAIN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. ST GERMAIN asked and was given permission to revise and extend his remarks.)

Mr. ST GERMAIN. Mr. Speaker, in view of the debate which has just taken place on the provisions of H.R. 1799, in the interest of time my remarks can be compressed, dealing only with the subject of possible expanded banking holding company participation in the activities of export trading companies and a brief summary of bankers' acceptances amendments.

H.R. 6016, the Bank Export Services Act was introduced by me on March 31, 1982, and cosponsored by 24 members of the Banking Committee. The bill was the subject of 3 full days of hearings with testimony from over 25 witnesses.

An amendment in the nature of a substitute was adopted by the Subcommittee on Financial Institutions, based on the comprehensive hearing record and extended consultations with the administration, the regulatory agencies and all other interested parties, by voice vote. As a result of this most deliberative process, the full committee ordered the bill reported by a 40-to-0 vote. The committee (H. Rept. 97-629) was filed on July 1.

Because of the fact that ETC legislation in both the 96th and 97th Congress has been referred to and considered by three committees (Banking, Judiciary, and Foreign Affairs), it is necessary at the outset to state the obvious that insofar as banking law provisions are concerned, H.R. 6016 with its accompanying report (H. Rept. 97-629) together with the debate now occurring on the provisions of H.R. 6016 will be the definitive legislative history of banking law amendments, notwithstanding inconsistent statement appearing elsewhere, purporting to interpret banking language.

In the 96th Congress, legislation was developed out of congressional studies of the American exporting experience. The goal of that legislation was to reduce regulatory and statutory barriers to exporting and to encourage more American businesses to become involved in international trade. The previous administration, as a part of its overall export policy, endorsed Export Trading Company (ETC) legislation similar to that now under consideration by the Congress. As evidence of widespread support for increasing this Nation's export trading capability, the House Export Task Force was established consisting of over 100 members representing every geographic region in the United States with the prime purpose of advocating legislation that supports American export trade. Three members of the House Banking Committee have served from its creation on the task force executive committee: former Banking Committee Chairman HENRY REUSS, now chairman of the Joint Economic Committee; STEPHEN L. NEAL, chairman of the Subcommittee on International Trade, Investment and Monetary Policy; and JOHN J. LAFALCE, one of the earliest House sponsors of ETC legislation.

Our committee's formal consideration of pending ETC legislation began in the 96th Congress after a series of informal discussions with representatives of the previous administration and all other interested parties, both proponents and opponents, to the pending Senate passed legislation (S. 2718). These discussions culminated in a hearing by the Subcommittee on Financial Institutions on September 30, 1980. On that occasion I expressed the subcommittee's concerns as follows:

This Subcommittee's principal concerns are the key sections of the legislation which would, for the first time in the history of this Nation, grant commercial banks the authority to make equity investments in export trading companies. This is a giant step in the expansion of banking powers, and if this legislation is enacted it will mean a substantive breach in our longstanding policy against the mixing of commerce and banking powers.

At a minimum, we should discover what the legislation will mean for: First, the traditional separation of banking and commerce; second, the safety and soundness of banking institutions; third, the competitive balance in the financial industry; and fourth, the promotion of exports.

All of us on this Subcommittee, and I suspect throughout the Congress, are solidly behind the desire to increase exports of U.S. products. I would not take a back seat to anyone in the support of export promotion, but I also believe we must make certain that we are providing real remedies, not quick fixes that may create more dislocations in the economy.

In their consideration of trade matters, both the previous and the current administration as well as the Export Task Force have focused on a number of issues, including both trade incentives and disincentives. The Banking Committee, as a result of its legislative jurisdiction, has continued to direct its attention in the 97th Congress both to the issues of providing adequate bank financing for international trade activities as well as to a review of the impact of authorizing banking organization investments in ETC's on the long-standing policy of

separating banking from commerce, discussed fully in the committee report on page 9. The traditional policy has been based on the belief that the integrity of the payments mechanism and the nature of competition for funds would be compromised if banks undertook the risks inherent in commercial and industrial ventures, or had conflicts of equity interest that involved favorable treatment for some customers, possibly bringing into serious question the banker's principal role as an impartial arbiter of credit. It should be noted at the outset that both the previous and the current administration continue to adhere to the principle of the separation of banking and commerce while supporting increased bank participation in ETC operations, including equity ownership. Deputy Secretary of the Treasury McNamar stated to the subcommittee the following:

The administration feels that your bill maintains this traditional separation by authorizing export trading companies only as subsidiaries of bank holding companies. We wholeheartedly endorse this approach, since (1) with the proper safeguards it would not impose a significantly higher risk on the banks in the holding company group; and (2) with appropriate changes in banking laws, it would not give bank-affiliated ETCS an unfair competitive advantage over other business concerns competing for access to credit.

Subsequent to Senate passage of S. 734 on April 8, 1981, a number of informal staff discussions were held by the respective house committees to which S. 734 was referred—Banking, Judiciary, and Foreign Affairs. In an effort to assist the Subcommittee on International Economic Policy and Trade on the House Foreign Affairs Committee, which evidenced a desire to move forward on companion bills to S. 734, I advised that subcommittee by letter of October 29, 1981, of the basic concepts which would ultimately govern this committee's response to the bank participation title in pending ETC legislation. That letter reaffirmed the separation principle.

In addition, the committee encouraged a series of discussions within the administration—Commerce, Treasury and the Office of Trade Representative—and between Commerce and the Federal Reserve Board in an effort to devise a realistic compromise insofar as bank investments in ETC's are concerned. As a result of the discussions and continuing action by both the Foreign Affairs and Judiciary Committees, H.R. 6016 was introduced and became the subject of subcommittee hearings on April 22, May 19, and May 25, 1982. Recognizing the importance of bankers acceptances in financing international trade and the need for modernization of the present Federal laws governing the use of bankers' acceptances, H.R. 6016 also incorporated the general scope of the provisions of H.R. 2438, introduced by Congressman DOUG BARNARD.

Following these hearings, and after consultation with members of the subcommittee, an amendment in the nature of a substitute was prepared that incorporated many of the suggestions offered by witnesses and subcommittee members. This amendment removed the authority for Edge Act corporations to invest in ETC's, at the suggestion of the Federal Reserve Board and the Treasury Department. To enable the 10,000 or so small banks in the Nation which are not affiliated with a bank holding company to participate in the operations of an ETC, authority for bankers' banks to invest in ETC's was included in the substitute. The substitute prescribed a 60-day Federal Reserve disapproval period rather than an unlimited term approval period as in the introduced bill. Refinements were also included in the substitute concerning the limits on credit extensions to ETC's, the definition of an ETC, and the provisions governing bankers' acceptances. The substitute amendment itself was amended in the subcommittee markup to provide the Federal Reserve with additional authority to prevent unsafe and unsound speculative activity by an ETC, and to exempt State-chartered, non-Federal Reserve member banks from bankers' acceptance limits contained in H.R. 6016.

Finally, in section 3 of H.R. 6016, as amended, the committee substantially liberalized provisions of the Federal Reserve Act relating to bankers' acceptances. The Federal Reserve Board in its testimony before the subcommittee acknowledged the need for liberalization as follows:

The board believes that it is both appropriate to expand the current aggregate limitation on the issuance of eligible bankers' acceptances and to apply those limits to the other entities with which member banks compete in the acceptance market. In applying the limitation on eligible bankers' acceptances to U.S. branches and agencies of foreign banks, the board believes that the appropriate measure of capital is the worldwide capital of the parent foreign bank."

The committee is indebted to the untiring efforts of our colleague, Congressman DOUG BARNARD, who advanced the cause of modernization of our present laws governing the use of bankers' acceptances by his introduction of H.R. 2438 incorporated as section 3 of H.R. 6016. Bankers' acceptances are important in the financing of international trade activities. This liberalization or deregulation supplements the bank holding company ETC provisions.

In conclusion, as I stated when the committee by a 40 to 0 vote reported to the floor H.R. 6016, "this legislation is a reasonable approach to resolving the twin concerns of insuring bank safety and soundness by limiting the breach in the separation of banking and commerce, and encouraging the flow of exports from this Nation." The concerns which the subcommittee expressed in 1980 have been met by taking the export trading company activity out of the bank and placing it into the bank holding company structure and insuring a significant regulatory presence during the application procedure and a continuing presence during the subsequent operations of those export trading company financed by bank holding companies or banker banks by the Federal Reserve Board.

Therefore, the Banking Committee believes it has succeeded in minimizing the risk of breaching the wall separating banking from commerce with the conviction that the remaining risk is clearly justified by the hope and indeed the expectancy that increased participation by bank holding companies will provide important assistance to small- and medium-sized businesses which produce goods for foreign consumption and in the process the increased international trade will produce significant economic activity and jobs domestically.

While no one can predict with certainty the effect this legislation will have on job creation, it has been conservatively estimated that the passage of export trading company legislation could, by 1985, increase employment by between 320,000 and 640,000 workers. The New England Institute estimated that the six New England States in 1980 alone generated over $10 billion in export sales, creating 135,000 jobs. The institute's survey conducted in 1981 estimated an increase of over 25 percent in sales for 57 percent of export trading company respondents with all respondents indicating increases of at least 5 percent in sales. Thus, the potential effect of export trading company legislation in New England alone, utilizing the lowest of these estimates, could mean an additional $500 million in sales, creating over 10,000 additional jobs.

I urge adoption of H.R. 6016.

□ 1410

Mr. ST GERMAIN. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. MINISH).

(Mr. MINISH asked and was given permission to revise and extend his remarks.)

Mr. MINISH. Mr. Speaker, I rise in favor of passage of the Bank Export Services Act.

Since World War II, we have all been aware of the rapid growth that took place and changes that followed. We went from a marketplace dominated by domestic manufacturers to one in which consumer demands are currently for low-cost foreign-supplied items. Our own domestic manufacturing has slowed almost to a halt.

In order to regenerate and revitalize this country's economy, it is necessary that we take steps to increase our production and to expand that production into new markets. It is my contention that with the passage of the Bank Export Services Act we will be getting

back on the track of creating new jobs for those deserving citizens of this great country.

It is well known that small- and medium-sized businesses create most of the jobs that employ our citizenry. This legislation will allow and encourage those small- and medium-sized firms to engage in business ventures in foreign markets.

This bill does not affect the ability of individuals and organizations to form export trading companies. In fact, it is the intention of this legislation to generate local and State government entities, and port authorities to innovate necessary and developmental export programs keyed to their local, State, and regional needs.

I urge my colleagues to vote favorably on this bill.

Mr. STANTON of Ohio. Mr. Speaker, I yield myself such time as I may consume.

(Mr. STANTON of Ohio asked and was given permission to revise and extend his remarks.)

Mr. STANTON of Ohio. Mr. Speaker, I join the able chairman of the committee in support for this bill. I am pleased that *this bill is finally* before the membership. I have found it somewhat disturbing it has languished for so long in the House for no apparent reason. It has virtually no opposition, it costs *nothing*, and it may have a positive effect on the U.S. export position some day. I use the word "may" advisedly.

While I am generally happy with the current form of the bill, I feel compelled to make a couple of comments. This bill has presented major U.S. banks with a significant victory. Not only do we allow them to venture into a new form of business that is potentially very profitable, but at the same time, we have bored a new hole in the wall that has traditionally separated banking from commerce. Our committee approved this weakening of the Glass-Steagall principle for one reason only—to promote exports.

Mr. Speaker, while what we do here today is very important, I am afraid there might be a tendency on the part of both the administration and Congress to rest on their laurels—waiting for a huge surge in exports that may never come. There should be no mistake about what we do here today. This bill cannot be viewed as a comprehensive new export policy, despite successive administration attempts to clothe it as such. Nor should we think that we have solved any of the other significant problems that have inhibited U.S. exports—problems such as unfair export credit competition, inadequate financing for Eximbank, lackluster export promotion services by administration agencies, inadequate enforcement of existing trade sanctions, foreign government subsidies to high technology industries, and so forth.

In my view, it would be a sad mistake if we stop here, and claim we have solved our export problem. While I think all parties deserve credit for putting together a good bill, particularly the chairman of the committee, I feel we should now redouble our efforts to address the important problems that remain—problems that are increasingly making us a second-rate trading nation.

Mr. Speaker, I see on the House floor many Members who were responsible for this, not only over a period of months but over years, in order to reach the moment we are experiencing at this time.

I especially want to compliment the chairman of our committee, who made a decision earlier in the year that this would be a priority business before our committee. It was with this emphasis that he took the legislation that was presented to him, worked very hard, and, on a nonpartisan basis, arrived at this conclusion.

So first and foremost, I think, Mr. Speaker, the chairman of our full committee deserves full support for the action that we hope we will take here later on today.

Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Ohio (Mr. WYLIE).

(Mr. WYLIE asked and was given permission to revise and extend his remarks.)

Mr. WYLIE. I thank my friend, the gentleman from Ohio (Mr. STANTON) for yielding this time to me.

Mr. Speaker, a bill very similar in concept to this one was passed by the other body earlier in the session by a vote of 93 to 0.

In the last Congress, a bill which had a similar concept passed the other body by a vote of 77 to 0. So there is much support for the idea and purpose behind this legislation.

I must say, Mr. Speaker, that the chairman has been cautious and deliberate about moving the bill through the committee, and I do feel that in the process he has helped us develop a better bill with which to go to conference.

There are a couple of places where I think the bill could be improved, but I believe it to be more important today that we expedite consideration of the bill and do urge passage of the bill in its present form.

As a result of extensive negotiations involving Members on both sides of the aisle, representatives of various departments of Government, and agencies, and representatives of banks seeking to enter the trading company business, this bill does represent a substantial improvement over the version which was originally passed so quickly by the other body.

Legislation to permit banking organizations to invest in export trading companies makes good sense, to my way of thinking. I believe that export trading companies can be useful as a means of improving the export performance of the United States.

I believe this bill can be made more workable and I expressed that thought during full committee markup.

Toward that end, I offered one amendment which was agreed to which added the words "managerial and financial resources" to the criteria which the Federal Reserve Board will use in considering applications for permits.

For the record, I believe the limitation on the ability of a bank holding company to finance an export trading company subsidiary is a restriction which is counterproductive. I would suggest that we make applicable the existing provisions of section 23A of the Federal Reserve Act to extensions of credit by a bank to the bank holding company in the case of export trade in the same manner as extensions of credit to support any other nonbanking activity. I do not believe it is necessary to establish a separate procedure governing bank financing to export trading compaines, and I am concerned that this special provision might impede bank participation in export trading companies because it will require new procedures on the part of investing bank holding companies and new interpretations by the Federal Reserve.

I feel the definitions of export trading company and export trade services to allow export trading companies more leeway to import in order to improve their ability to increase exports is desirable.

In summary, Mr. Speaker, I would emphasize that this is a good bill and I urge my colleagues to support it.

I yield back the balance of my time.

Mr. ST GERMAIN. Mr. Speaker, I yield 5 minutes to the gentleman from New York (Mr. LAFALCE), one of the original sponsors and pioneers on this legislation.

(Mr. LAFALCE asked and was given permission to revise and extend his remarks.)

Mr. LAFALCE. Mr. Speaker, today the House of Representatives has an opportunity to endorse legislation which will provide a firm basis for expanding U.S. exports. As the original House sponsor of export trading company legislation, I have welcomed rapidly growing interest in the potential of this new opportunity, and I have been gratified by the active support for trading company legislation. Over 130 of my colleagues have cosponsored my bill, H.R. 1648, and I am sure they all share my enthusiastic support for H.R. 6016, the legislation we consider today.

When I first introduced my original bill during the 96th Congress, I was motivated in large part by concern about our deteriorating balance of trade. U.S. trade balances had been in deficit since 1975, with participating large deficits in 1977 and 1978. It seemed clear at that time that poor export performance was contributing

substantially to the deficits, and that increased exports offered one of the more effective ways to remedy the problem. Those of us who looked closely at the structure of U.S. trade and the structural impediments to increased exports were struck by the success of our competitors, most notably the huge Japanese trading companies. Operating in virtually every country in the world, financed in part through strong ties to Japanese banks, and experienced in alternative trade mechanisms such as barter and three-way trading, the Japanese trading companies had grown enormously. In fact, they were becoming increasingly important as export agents for U.S.-produced goods. From the beginning, we used the Japanese trading companies as a partial model for ETC legislation, but maintained careful attention to the different business and legal framework within which our own institutions must operate.

I reintroduced export trading company legislation during the early days of this Congress, with immediate bipartisan support. It was clear that the need for stimulating exports had, if anything, increased. The economic downturn had constricted domestic markets and a stronger dollar had made our exports more expensive—and thus less competitive—on world markets. Unfortunately, those same forces remain today. While it cannot fully compensate for them, export trading legislation has become an important response to the pressures for new protectionist measures in this country.

The new administration accepted the need for export trading company legislation and endorsed my bill, H.R. 1648. The Senate moved swiftly on almost identical legislation, S. 734, and on April 8, 1981, passed it unanimously by a vote of 93 to 0. In the House, H.R. 1648 and similar bills had been referred to three separate committees, and each proceeded independently. But none could ignore the growing consensus, both in Congress and within the business community, that export trading company legislation was an idea whose time had come. Our cause was bolstered by independent studies such as the one undertaken by the New England Congressional Institute, it showed widespread support for the legislation within the business and banking communities and suggested that we would see immediate response to the new opportunities provided by the legislation. Other studies forecasted that the legislation might provide even more new jobs than originally anticipated, an important consideration during this period of escalating unemployment. Growing awareness of the legislation was immediately translated into appeals for prompt congressional action.

On March 31 of this year, the chairman of the House Banking Committee submitted his own proposal for the banking related elements of export trading company legislation. I was among the original cosponsors of his bill, H.R. 6016. The chairman's approach differed little from the banking title of my own bill, and his bill included an additional export stimulus in a provision increasing the limits on bankers' acceptances, which provide a means of guaranteeing payment for goods being shipped.

During extensive hearings this spring, the committee considered additional changes and refinements suggested by a broad cross-section of interested parties. We heard from exporters, potential exporters, existing trading companies, banks, and bank regulators. Almost every witness suggested improvements designed to make the legislation more attractive to his own organization, and it was left to the committee to sift through proposed changes. In its final form, H.R. 6016 represents careful study, cooperation, and compromise. Each element of the bill was subject to the same two tests: Will it make export trading companies more effective at meeting our export goals; and will it be workable within the legal and regulatory structures of U.S. banking.

The goal of this legislation has been clear from the beginning: Increasing exports. During the hearings, I restated my own conviction that export success, not bank profits, should be our objective. Certainly that will be the standard by which the legislation will be judged by a public eager for both the new jobs and the economic boost that exports can provide.

Export trading companies have existed in this country for years, but their growth and expansion have been severely limited by inadequate capital. Although several large corporations, including Sears and General Electric, have announced the formation of new trading company subsidiaries, their impact, at least initially, will be limited. Formation of corporate sponsored ETC's has given new impetus to our efforts to open the door to banking investments in trading companies, but I doubt we will ever see an American replica of the Japanese trading giants; it would be too inconsistent with our own business and legal traditions. I am convinced that bank investment in trading companies can contribute substantially by helping more U.S. firms to become exporters.

In addition to new capital, bank participation has the potential to improve the efficiency of trading company operations by making available the existing expertise and infrastructure possessed by large international banks. Contacts with potential customers, familiarity with export financing and currency transactions, and better means of evaluating the creditworthiness of foreign customers will all be facilitated by their worldwide networks of offices and affiliates. Because we felt that exploiting the recognition and goodwill associated with existing banking activities would stimulate exports, the committee chose to permit holding companies to use their own names for trading company affiliates.

In other cases, regional banks may choose to build upon their relationships with local business in order to encourage new export activities. Risk, uncertainty, and lack of familiarity with export procedures have all discouraged many small and medium sized firms from developing export markets, but a well run trading company could substantially reduce those hurdles. By linking with existing trading companies, regional banks can provide the necessary expertise and financing to make exporting attractive to many more firms. In addition, because of their familiarity with the financial and management resources of local firms regional banks are uniquely equipped to help small companies meet the challenges of export-related growth.

In addressing the direct objective of increasing U.S. exports, H.R. 6016 also represents an important step in the modernization of banking law. Authorization for bank investment in trading companies constitutes a significant relaxation of the historic legal separation of banking and commerce, and the committee carefully reviewed the terms and conditions of such investments. This legislation is designed to preserve necessary safeguards for the safety and soundness of our Nation's banking institutions, while permitting bank holding companies to make better use of their substantial resources.

On a case-by-case basis, the committee relies on the substantial supervisory and regulatory resources of the Federal Reserve System to protect banks against the effects of unsound practices by their parent holding companies. At the same time, the committee also wished to insure that those resources not be applied to blocking legitimate investments, a possibility introduced by the Fed's open scepticism about the legislation. Accordingly, H.R. 6016 directs that the Fed must be advised in writing at least 60 days in advance of a bank holding company's proposed investment in an ETC and provides for an additional 30 days review period under defined circumstances. Absent a formal notice of disapproval from the Fed, the holding company is authorized to go ahead with the investment. Specific grounds for disapproval are outlined in the legislation, and it was the committee's intention that Fed review be confined to legitimate questions of bank safety, not unrelated activities of either the holding company or its other subsidiaries. The legislation itself protects against excessive risk by limiting direct investment to 5 percent of the holding company's consolidated capital and surplus; further, loans from the holding company and all its other subsidiaries may not total more than

10 percent of the holding company's consolidated capital and surplus.

The bill approved by the Banking Committee defines export trading companies as organizations operated exclusively for the purpose of exporting or facilitating the export of goods and services made in the United States. Our choice of the word "exclusively" reflects a deliberate intention to focus the activities of ETC's on exports rather than imports, but H.R. 6016 clearly authorizes such importing activities as are necessary to facilitate exports and promote ETC operations in foreign countries. ETC's are also authorized to make product modifications necessary to prepare U.S.-made goods for foreign markets and to take title to goods being exported. An important element of trading company legislation is the explicit recognition of services as a distinct class of exports. In fact, a growing proportion of our export revenues comes from the services sector.

In its final form, H.R. 6016 represents the culmination of a long evolutionary process, a process marked by long discussion and careful study. We have fine-tuned my original proposal, and the resulting legislation will be an important stimulus to our economy. Thousands of U.S. companies will now have access to a complete range of export assistance, and many will find new prosperity in foreign markets. My own involvement with this legislation has been very satisfying, and I am pleased with the results of our efforts. The Banking Committee can be proud of our success in drafting such excellent legislation. I encourage the full House to support us today.

□ 1420

Mr. STANTON of Ohio. Mr. Speaker, I yield 4 *minutes to the distinguished gentleman from Connecticut* (Mr. MCKINNEY).

(Mr. *McKINNEY* asked and was given permission to revise and extend his *remarks.*)

Mr. MCKINNEY. Mr. Speaker, today the House has an opportunity to take a major step to expand further foreign markets for American businesses. The Bank Export Services Act, H.R. 6016, is an important weapon in the international trade battle and helps U.S. businessmen compete more effectively abroad.

We have heard much said recently about the intrusion of foreign companies in the U.S. economy. The influx of imported cars, foreign steel, imported electronics, and a variety of other products have heightened the awareness of the American people to the rules of the international trading game. A number of bills have been introduced which are openly protectionist in nature and which cry for further retaliation from our trading partners. That approach, in my opinion, serves no positive purpose and, in fact, is contradictory to our free market philosophy.

Export trading companies have long been a part of American commerce. However, there has been traditionally a veil drawn between banking and commerce which has prevented banks from becoming involved in export trading services. When this separation was imposed in the mid-19 century, it addressed business conditions which existed at that time. Today's conditions require a new set of laws and regulations. I believe H.R. 6016 is a well-drafted proposal to meet the current needs of American bankers and businessmen.

I commend Chairman ST GERMAIN, the Banking Committee ranking member, Mr. STANTON, and Mr. WYLIE, ranking member of the Financial Institutions Subcommittee, for their efforts in bringing this bill to the floor. The legislation represents a bipartisan effort to permit our businessmen access to the talents and capital of our banking community to compete more effectively in international markets.

I am aware that a great deal of interest exists in my part of the country for this legislation. Small- and medium-sized bankers view this as an opportunity to expand into a natural market for their services and one which the major banks are not necessarily able to cover. I have been contacted by many smaller businessmen who are eager to have access to the information about foreign markets that export trading companies can offer.

Under the protections that H.R. 6016 contains, it is logical that a marriage of bankers' expertise and businesses seeking new markets be consummated. In developing this bill, our committee carefully considered potential abuses and risks. We then included prohibitions against speculation and other abusive activities. There are adequate safeguards in this bill to assure that bank holding companies and bankers' banks which become involved in export trading companies will not have their traditional safety and soundness jeopardized.

The Bank Export Services Act will help expand U.S. exports. It is a positive step to meet the challenge for international markets. We should not retreat behind protectionist barriers which will lead only to more retaliation abroad. We have the opportunity to permit American businesses more freedom to compete in the world market using the same methods as our trading partners do. The administration wants this bill: American business wants this bill. I urge my colleagues to vote for H.R. 6016 as a message to the world, and the American business community that we mean business but in the American way.

Mr. STANTON of Ohio. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Delaware (Mr. EVANS), whose leadership has been greatly appreciated on this legislation.

(Mr. EVANS of Delaware asked and was given permission to revise and extend his remarks.)

Mr. *EVANS of Delaware.* Mr. Speaker, I appreciate the comments of my friend, the gentleman from Ohio (Mr. STANTON).

Mr. SPEAKER, American companies must be given the tools to compete effectively with our trading partners. Legislation on the House floor today recognizes this important need.

Over the past two decades, the U.S. share of world trade has been steadily declining. This is particularly unfortunate since it is clear that many American products could be very competitive in the world market. At stake are thousands upon thousands of jobs for American men and women.

Our Nation's small- and medium-sized companies are the ones which create most of this country's jobs, and it is also these firms whose foreign sales are now impeded by a lack of operating capital and financing. Legislation to facilitate the development of export trading companies would do a great deal to correct this situation, resulting in a significant increase in American jobs and an expanded U.S. share of total world markets.

I urge my colleagues who will participate in the conference on export trading company legislation to complete their work as quickly as possible so that this valuable export tool will be available to provide a much-needed increase in the number of American jobs.

Mr. STANTON of Ohio. Mr. Speaker, *I yield 2 minutes to the distinguished gentleman from Minnesota* (Mr. FRENZEL), a former member of our committee.

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Speaker, I spoke a moment ago on the companion bill which will, along with the bill that is now before us, become the House version of an Export Trading Companies Act, and noted at the time that it was not a perfect bill. In fact, it, or they, substantially lack some of the advantages of the bill in the Senate. I think those statements are even more appropriate regarding this bill produced by our Banking Committee.

One of the problems here is that the Committee on Banking has apparently reversed the rather strong statement of the Committee on Foreign Relations with respect to import activities. Almost everyone in the trading business knows that imports often serve as a great enhancement to export stimulation. I think this bill generally does not provide the flexibility that exists in the Senate version. Flexibility in import activity is something that should be improved in the conference when it is held. Obviously, these ETC's need maximum flexibility to perform in the most effective way.

There is also a little more regulation in this bill than most people who are interested in expanding trade would like to see. I am nervous about over-regulation, particularly by the Fed in this instance.

Nevertheless, I do not want to be ungrateful for a splendid effort on the part of the Banking Committee. Something is better than nothing.

I only hope that, having had a taste of providing a very modest incentive for exports that in the future the committee will see that it has acted with undue restraint, and will then proceed to expand export opportunities in the future.

Mr. STANTON of Ohio. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. PATTERSON).

□ 1430

(Mr. PATTERSON asked and was given permission to revise and extend his remarks.)

Mr. PATTERSON. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of the Bank Export Services Act, H.R. 6016. This bill represents a strong step by the Congress in the area of export promotion. There is little doubt that there are many small- and medium-sized firms throughout the country that have the products to sell overseas but not the means to do so. The costs are simply too high for a small company to go it alone. Meanwhile, our trade deficits continue to grow. H.R. 1799 and H.R. 6016 represent a significant first step in exploiting the untapped export potential of the United States.

The excuse that abnormally high prices for imported oil used to explain away and rationalize our huge trade deficits no longer holds. The plain truth is that we are being outdone by our competitors. The Japanese as everyone knows have been particularly successful. Much of their success is based upon the proficiency of export trading companies. It is time for the United States to take hold of this concept and run with it.

At the present time, 1 percent of our companies produce 80 percent of our exports. Small- and medium-sized companies, although often possessing the desire and productive capacity to export, simply do not have the financial means and expertise to do so. An export trading company would provide the whole range of export services from financing to marketing studies to actually selling products overseas. The result, increased sales for U.S. companies and a significant increase in employment.

Banking concerns will play a key role in the formation of ETC's because they will be permitted to invest in these companies. Banks with international expertise already have many of the support facilities, foreign business contacts and marketing know-how which are prerequisities for successful exporting. Additionally, their domestic commercial activities bring them into constant contact with companies which to date have ignored export markets yet produce goods and services which are highly marketable abroad. U.S. banking institutions are vital to the success of this legislation. I urge my colleagues to vote for H.R. 6016. American business and labor will be the winners.

Mr. ST GERMAIN. Mr. Speaker, I yield such time as he may consume to the gentleman from Minnesota (Mr. VENTO).

(Mr. VENTO asked and was given permission to revise and extend his remarks.)

Mr. VENTO. Mr. Speaker, I rise in support of the legislation.

Mr. Speaker, approval of H.R. 6016, the Bank Export Services Act, is an important step toward increasing the exportation of goods manufactured in the United States. Successful implementation of this legislation will increase demand for American products and provide new employment opportunities for American workers.

At a time of the highest unemployment since the depression, it is critically important that the Federal Government facilitate job creation. However, it is my concern that the amount of credit needed to finance substantially increased exports not come at the expense of the credit-sensitive industries already established in our economy. The Federal Reserve should recognize that the legislation will increase the demand for credit, and it should move to accommodate this new credit demand without reducing the supply of credit to other sectors of the economy. Specifically, the Federal Reserve should accommodate this new demand for credit and if necessary institute monetary policy changes which will expand the availability of credit.

It is necessary for Congress to encourage exports which will result in increased employment opportunities for American workers. For this to be successful, there will be an increased demand for credit by export trading companies and American manufacturers of exported products. However, it would be poor public policy for the Federal Government to encourage American exports and encourage an increased demand for credit at the expense of the American workers employed in other credit sensitive industries.

Mr. ST GERMAIN. Mr. Speaker, I yield 4 minutes to the gentleman from Georgia (Mr. BARNARD).

Mr. STANTON of Ohio. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. BARNARD).

(Mr. BARNARD asked and was given permission to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, will the gentleman yield?

Mr. BARNARD. I yield to the gentleman from Arkansas.

(Mr. ALEXANDER asked and was given permission to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, one of the most commanding needs in our Nation today is to encourage small- and medium-sized businesses to export, and those needs are met in part by this bill.

In that connection, Mr. Speaker, I note with satisfaction that on page 9 of the report accompanying H.R. 6016 it is stated that this bill in no way affects the ability of such organizations as agricultural cooperatives to organize or invest in export trading companies. However, I would like to clarify some language in the bill which could possibly be construed as prejudicial to agricultural cooperatives.

On page 4, lines 10 and 11, and again on page 7, lines 5 and 6, the bill states that export trading companies—and I quote—"may not engage in manufacturing or agricultural production activities."

The National Council of Farmer Cooperatives has written me asking if the agriculture production prohibition does not cast some uncertainty on the eligibility of farmer cooperatives as trading company partners.

Mr. Speaker, I will ask the chairman, in his judgment, is this the case?

Mr. ST GERMAIN. Mr. Speaker, will the gentleman yield to me for a reply?

Mr. BARNARD. I yield to the gentleman from Rhode Island.

Mr. ST GERMAIN. Absolutely and very definitely not. H.R. 6016 says an export trading company may not engage in agricultural production. The activities of an agricultural cooperative which wants to organize or invest in an ETC are immaterial. Even if an agricultural cooperative were engaged in extensive farming operations, it would still be completely eligible, under the terms of H.R. 6016, to organize or invest in export trading companies.

Mr. ALEXANDER. Mr. Speaker, I thank the gentleman from Rhode Island (Mr. ST GERMAIN) and I thank the gentleman from Georgia (Mr. BARNARD) for yielding.

Mr. BARNARD. Mr. Speaker, this is a significant day for those of us in the House, for today we begin the long-overdue process of adapting our financial system to the changing marketplace.

Much of the credit for this beginning must go to the distinguished chairman of the Banking Committee, Mr. ST GERMAIN. He has had the vision to see the urgent need for this bill, and to shape the legislation to meet the actual competitive needs of our financial institution. The chairman has worked with all of us on the committee, and the result is a truly nonpartisan package that will significantly enhance our export capability.

Export trading companies will be major vehicles for presenting Ameri-

can goods and services to the world markets. Although American companies have always exported, we have not had any real policy to encourage exports. Instead, we have often inadvertently made it more difficult to export. As a result, our overseas sales, while significant, have not been as great as they should be. Many commercial opportunities that would have provided jobs for the unemployed, new industries for blighted areas, and incentives to innovate because there was no vehicle for smaller firms to use to increase foreign sales.

Export trading companies will fill this void. They will be able to provide services to the smaller- and medium-sized exporter that are currently available only to huge corporations. Utilizing the expertise and foreign presence of banks, they will be able to package export services ranging from marketing surveys to finding buyers, from arranging shipping to product modification, and from financing payment to arranging barter transactions. In all cases, these are services that presently are available only to those exporters who are able to devote the time and money to search them out.

I am proud to say that H.R. 6016 contains a provision that I originally advanced, expanding the limitations on bankers acceptances. Since Congress created the U.S. acceptance market in 1913, they have become an essential part of financing trade. However, the law this body passed almost 70 years ago have not been significantly revised since then.

One of the major revisions has been to place all banks, foreign and domestic, on an equal footing and under the same legal requirements. This means that a foreign-owned bank doing business in this country will not have an unfair advantage in this market, as they too will be covered by this law. For the first time, they will also be subject to the limitations of this act, which will be based on their worldwide capital and surplus, just as it is for a domestic bank.

Under the language of this bill, acceptances will for the first time be available to smaller and medium-sized exporters. In the past, the restrictions on the amount of acceptances that could be issued limited them to only the largest exporters, but in this legislation, we have increased the amount that can be outstanding. As a result, smaller firms will, for the first time, have access to this low-cost form of export finance.

Even more importantly, for the first time, we are allowing smaller banks to offer their customers access to export financing. They will be able to both purchase shares of any acceptances issued in behalf of their larger customers, and to originate them for their smaller customers through the mechanism of acceptances.

This committee has worked long and hard to come up with the best way to give these banks and exporters access to this type of trade financing, and has allowed them to be participated through other banks. We have been very specific about how these acceptances should be written, and have come to the conclusion that only the name of the issuing bank needs to be placed on the acceptance.

We do not believe that it is necessary for the names of the participating banks to be placed on the face of the document because they do not have the responsibility to repay an acceptance presented by a secondary market buyer.

However, there is an unqualified obligation to repay the originating bank. In standard practice in areas of the country where participations in acceptances have been sold for some time, the participation agreement states that if the acceptance is not liquidated by the bank's customer, the account the participating bank holds with the originator may be debited for the amount of the participation without further notice. This practice was instituted after lengthy consultations with two of the major accounting firms in the country.

As such, the issuing bank is substituting the risk of the participant for that of the borrower, and in theory, the participant is at risk regardless of the actions of the borrower. In practice, since almost all acceptances are secured by an actual transaction, there is minimal risk to both the participant and the issuing bank.

This is similar to the procedure that has been followed for many years in the case of a standby letter of credit that is participated to another bank. The participating bank does not have to issue a separate letter of credit to the originating bank, but it does have the legal obligation to cover the debt up to the extent of its participation if the borrower is unable to pay. This has been standard banking practice for some time, and participations in acceptances will follow a similar pattern.

In no case should standard credit judgement not be exercised in the case of an acceptance on the part of either the originating bank or any participating banks, but when such judgment is used, these will be among the highest quality financial instruments available to banks.

Acceptances are the safest form of trade finance, since almost all of them are secured by an actual transaction. In virtually all acceptances currently outstanding, title to the goods in the underlying transaction are held by the issuing bank until the credit is liquidated. Financial markets rate acceptances as among the highest quality financial instruments issued, and they are highly sought after in the secondary market. I am delighted that this low-cost, low-risk form of trade finance will now be available to all exporters, regardless of size.

Mr. Speaker, this legislation is a major beginning not only in expanding foreign trade, but in modernizing our system of financial institutions. However, much else remains to be done in the months ahead. For far too long, banks and thrifts have been unable to give their customers the services they need and desire because of outdated laws of another era.

As a result, literally billions of dollars are going into unregulated funds and investments. It is not a matter of our banks not being willing to change, but a matter of laws that limit them, or force them into unregulated forms of services at a greater risk to the customer. I expect that in the coming months and years we will continue to examine these limitations, and will revise them to meet today's needs and tomorrow's opportunities.

This act, H.R. 6016, is a major step to both increasing foreign trade and to allowing financial institutions to compete, and I urge my colleagues to support it.

Mr. ST GERMAIN. Mr. Speaker, will the gentleman yield to me?

Mr. BARNARD. I yield to the gentleman from Rhode Island.

Mr. ST GERMAIN. Mr. Speaker, I want to thank the gentleman from Georgia (Mr. BARNARD) for his statement, and I would like to take this opportunity to express my deep appreciation to the many members of the committee who worked so diligently with me and to our staffs who worked together in a very harmonious manner to bring this legislation to the floor.

It is truly a bipartisan piece of legislation, and I want to publicly thank our ranking minority member, the gentleman from Ohio (Mr. STANTON), the gentleman from Ohio (Mr. WYLIE), and the gentleman from Connecticut (Mr. MCKINNEY) and their staff for their cooperation and assistance in seeing to it that we come up with a piece of legislation that is, indeed, a product of all of the members of our committee on both sides of the aisle. I feel that this is legislation, as the gentleman has just stated, which is a precursor to some additional legislation that will modernize our financial institutions, both the thrifts and the commercials, to deal with the problems of the future. It will deal not only with the problems of the future but will serve the needs of the Nation.

Mr. Speaker, I thank the gentleman for yielding.

Mr. STANTON of Ohio. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Indiana (Mr. MYERS).

Mr. MYERS. Mr. Speaker, I thank my colleague for yielding me this time.

On page 4 of the bill the committee has spelled out the requirements and under what conditions disapproval might be necessary, and among those is undue concentration of resources. The section goes ahead and spells out just what those conditions might be.

But the section deals with decreased or unfair competition. This concerns

me very much. It seems to me like we are giving a lot of discretion to the Federal Reserve Board and are not really spelling out just what is unfair competition or decreased competition.

□ 1440

The gentleman from Ohio (Mr. WYLIE) in his additional views has talked somewhat about this. Did the committee express concern about granting so much authority to the Fed without spelling out just what is unfair competition?

Mr. WYLIE. Mr. Speaker, will the gentleman yield?

Mr. STANTON of Ohio. I yield to the gentleman from Ohio.

Mr. WYLIE. The gentleman has raised a good point. It is one that I tried to address a little while ago in my statement.

On page 3 of the bill it says—

The Board may disapprove any proposed investment only if—(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest; (II) the financial or managerial resources of the companies involved warrant disapproval . . .

There is a combination of provisions there which do confer rather broad authority and broad discretion upon the Federal Reserve.

The gentleman from New York (Mr. LAFALCE), I might say, and the gentleman from Connecticut (Mr. MCKINNEY) raised this issue during committee deliberations that the Fed might refuse to approve applications or impose excessive regulations upon export trading companies.

On page 11 of the report, it is stated that—

With the safeguards enumerated in the bill and *with prompt Federal Reserve review* of proposed investments, ETC's can be established that will provide these benefits to the public. . . . (Emphasis mine.)

It is clear that the Federal Reserve is expected to review applications promptly, and I believe it is clear from the legislative history that Congress means these applications to be approved unless a condition warranting disapproval exists.

What we did not want to do, and the gentleman has touched on this good point, is to make the review process so difficult that an applicant will have to spend all of its time in going through the application process and not be able to devote its efforts to promoting exports.

Mr. MYERS. Exactly.

Mr. WYLIE. We want to give them a chance to demonstrate that they can be an effective export trading company.

So, as I say, I offered one amendment which was approved during the deliberations in the committee, and withheld two more, on behalf of which I will be prepared to work during conference, which embody the gentleman's concern, that the Federal Reserve should not be delegated plenary authority to approve or disapprove applications at its discretion, or based upon the length of a foot of the Chairman of the Federal Reserve Board.

I think it is very important that we do not hamstring export trading companies with unnecessary regulations so that they cannot go ahead and perform the function which this legislation was designed to facilitate.

Mr. MYERS. The gentleman states in his additional views that the Fed asked for broader authority than the committee gave them in this bill, but yet it seems like in this one section, decreased or unfair competition, there is no spelling out, not a definition of what is a decrease of competition or unfair competition. It concerns me very much that you are leaving a rather large door open for Fed discretion as to which ones they will apply this rule to, and even have different rules under different cases.

I have been watching Fed for a number of years and I know there is a growing concern among other Members that we are giving Fed a lot more authority than possibly the intent of Congress ever was.

So I am pleased that the gentleman is going to offer this amendment in conference, and I wish him well with it, because I think this is something we need.

Mr. WYLIE. I thank the gentleman for raising the point and we will try to address that in conference, I assure the gentleman.

Mr. ST GERMAIN. Mr. Speaker, will the gentleman yield to me on that point?

Mr. STANTON of Ohio. In the remaining time, I do yield to the gentleman from Rhode Island (Mr. ST GERMAIN).

Mr. ST GERMAIN. On the point just being discussed, indeed we do not expand the power of the Fed. As a matter of fact, we said to the Fed, "You cannot just take all of the time in the World to make a decision, but you have to make a decision within a stated period of time."

We make it very clear, however, that the provisions of change H.R. 6016 apply only to ETC's. The Bank Holding Company Act, and present procedures thereunder in so far as other activities of bank holding companies are concerned are in no way affected.

The concerns of the gentleman are the concerns of our committee as well.

Mr. MYERS. Will the gentleman yield?

Mr. STANTON of Ohio. I yield to the gentleman from Indiana.

Mr. MYERS. I do not disagree with the gentleman but yet the Board, within 60 days, could arbitrarily say an applicant would be unfair competition an would not have to justify it because you leave a rather large door and you do not define it.

Mr. ST GERMAIN. Absent the change, the Board could conceivably hold the application indefinitely before reaching a determination. Indeed, what we have done is to say to the Fed "you must act within a 60 day period."

Very frankly, the way it is written, in my discussions with Chairman Paul Volcker, he made it clear that he is unhappy with this because it in fact H.R. 6016 is a restriction of existing Fed powers. Indeed, it is more liberal and is designed to promote and to assist the formation of ETC's.

Mr. MYERS. If the gentleman will yield one more time, what concerns me is the Board, after this bill becomes law, can make the same decision. The only thing we are doing is expediting that same decision and we make it within 60 days instead of 6 years, as the gentleman gave the example.

But they could still come to the same conclusion.

Really, what protection does the applicant have, what recourse does he have once the Board has arbitrarily made a decision?

Mr. ST GERMAIN. He has recourse to the courts as is the present case.

Mr. STANTON of Ohio. Let me say, since the gentleman brings up an excellent point and time is limited, and the point is one with which the committee has been very familiar, as the gentleman from Ohio (Mr. WYLIE) said, the minute we get to conference we will push this point a little bit more.

I appreciate the gentleman's contribution.

Mr. MYERS. I think that we are the rulemaking power right here and the policymaking should be done here and the Board should be the implementers of the policy and the rules. This is what I am concerned about.

Mr. BARNARD. Mr. Speaker, will the gentleman yield?

Mr. STANTON of Ohio. I yield to the gentleman from Georgia.

Mr. BARNARD. The guidelines are already in place that the Fed uses as far as unfair competitive practices are concerned. I am sure that they would apply in this case as they already apply in other unfair competitive situations.

● Mr. McDADE. Mr. Speaker, I rise in support of this much needed legislation. At a time when America's performance in the international trade market is not good, this bill will help return us to the levels of trade we once maintained, by making it possible for small- and medium-sized businesses to enter into overseas trade.

The economic prowess of small business is well-known and well-documented. Small business is highly innovative, competitive, a great cost saver, and the best creator of employment opportunities. We need to unleash this economic force on foreign markets in order to improve our export performance. This market also provides an excellent opportunity for expansion in this important sector of the economy.

Small- and medium-sized firms face a lengthy series of obstacles if they attempt to sell their products overseas.

For a small firm, it is prohibitively expensive to make arrangements for financing, licenses and permits, shipping and to solve all the other problems which come with exporting. Export trading companies serve businesses by making these arrangements. A small firm working with an export trading company can sell their products overseas almost as easily as selling in the next State.

Unfortunately, current law imposes a number of restrictions which severely limit the ability of export trading companies to function. In particular, there are antitrust laws and banking regulations which have created disadvantages for American firms. Our European and Japanese counterparts have fully developed the export trading company concept, which leaves our businesses at a disadvantage.

H.R. 6016 corrects this problem. It would terminate Federal regulations that prohibit Federal banking institutions from investing in export trading companies. This would enable these companies to strengthen their financial capacity and obtain the "international expertise" they need. Additionally, the bill resolves antitrust concerns which have arisen. By enacting this measure, export trading companies will be able to flourish and provide an important stimulus to our economy.

Mr. Speaker, H.R. 6016 is an important step toward the development of export trade for smaller firms. It is well drafted legislation which protects against abuses or possible harm to the banking community. We need to enact this proposal to encourage business growth in this time of economic hardship. I urge its approval by the House.●

● Mr. WORTLEY. Mr. Speaker, I rise in strong support of the bill to expand export trading companies.

A modern export policy is essential to the economic well being of the United States. Our major trading partners have known this for quite some time and have used the device of export trading companies to enhance their positions in the world marketplace. It is not too late for the United States to profit by their example, but time is of the essence.

That is why this legislation is so important. Throughout the hearing process, it became evident that the United States could improve its position as a major trading nation if it had certain tools, mainly the ability to broaden its base for the sale of goods abroad. Only a small percentage of American manufacturing firms are involved in exports at the present time, and an even smaller number of them account for almost 85 percent of U.S. exports.

It is difficult for many small and medium size businesses to enter the export market because they do not have access to adequate financing, market analysis, documentation, and after sale services readily available to them bundled together in a one-stop facility.

The potential for increasing the number of American jobs through exports is enormous. At a time when unempoyment in the United States is at an unconscionable level, surely we must do all that we can to open every avenue for increased employment. Chase Econometrics estimated that export trading companies could increase employment by as much as 640,000 jobs by 1985.

Bank participation in export trading companies is an absolute must. Not allowing bankers' banks and bank holding companies to become export partners would be a terrible mistake. The legislation reported favorably by the House Banking Committee has been carefully crafted to take into account the traditional separation of banking and commerce. The bill maintains the necessary safety and soundness principles to which our financial institutions must subscribe.

It is a good bill and it merits the favorable consideration of every Member of this body who is concerned about American jobs and the balance of trade.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Rhode Island (Mr. ST GERMAIN) that the House suspend the rules and pass the bill, H.R. 6016, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to permit bank holding companies and bankers' banks to invest in export trading companies and to reduce restrictions on trade financing provided by financial institutions."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ST GERMAIN. Mr. Speaker, I aks unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous material, on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

FACILITATING FORMATION AND OPERATION OF EXPORT TRADING COMPANIES AND ASSOCIATIONS

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that the Committee on Banking, Finance, and Urban Affairs, the Committee on Foreign Affairs, and the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 834) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

Mr. KRAMER. Mr. Speaker, reserving the right to object, I would like to pose an inquiry to the gentleman from Wisconsin (Mr. ZABLOCKI).

Could the gentleman tell us whether or not he has consulted with the leadership and the whip on this side of the aisle with respect to this request?

Mr. ZABLOCKI. Mr. Speaker, will the gentleman yield?

Mr. KRAMER. I yield to the gentleman from Wisconsin.

Mr. ZABLOCKI. Mr. Speaker, it is my understanding that this request has the agreement of the leadership on both sides of the aisle.

Mr. KRAMER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXPORT TRADING COMPANIES

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1981".

FINDINGS

SEC. 102. (a) The Congress finds and declares that—

(1) tens of thousands of American companies produce exportable goods or services but do not engage in exporting;

(2) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through producer-owned export trading companies;

(3) exporting requires extensive specialized knowledge and skills and entails additional, unfamiliar risks which present costs for which smaller producers cannot realize economies of scale;

(4) export trade intermediaries, such as trading companies, can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per-unit cost to producers;

(5) the United States lacks well-developed export trade intermediaries to package export trade services at reasonable prices (exporting services are fragmented into a multitude of separate functions; companies attempting to offer comprehensive export trade services lack financial leverage to reach a significant portion of potential United States exporters);

(6) State and local government activities which initiate, facilitate, or expand export of products and services are an important and irreplaceable source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(7) the development of export trading companies in the United States has been

hampered by insular business attitudes and by Government regulations; and

(8) if United States export trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they must be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad.

(b) The purpose of this Act is to increase United States exports of products and services, particularly by small, medium-size, and minority concerns, by encouraging more efficient provision of export trade services to American producers and suppliers.

DEFINITIONS

SEC. 103. (a) As used in this Act—

(1) the term "export trade" means trade or commerce in goods produced in the United States or services produced in the United States, and exported, or in the course of being exported, from the United States to any foreign nation;

(2) the term "goods produced in the United States" means tangible property manufactured, produced, grown, or extracted in the United States, the cost of the imported raw materials and components thereof shall not exceed 50 per centum of the sales price;

(3) the term "services produced in the United States" includes, but is not limited to accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services, not less than 50 per centum of the sales or billings of which is provided by United States citizens or is otherwise attributable to the United States;

(4) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(5) the term "export trading company" means a company, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for the purposes of—

(A) exporting goods or services produced in the United States; and

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(7) the term "Secretary" means the Secretary of Commerce; and

(8) the term "company" means any corporation, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization.

(b) The Secretary is authorized, by regulation, to further define such terms consistent with this section.

FUNCTIONS OF THE SECRETARY OF COMMERCE

SEC. 104. The Secretary shall promote and encourage the formation and operation of export trading companies by providing information and advice to interested persons and by facilitating contact between producers of exportable goods and services and firms offering export trade services.

OWNERSHIP OF EXPORT TRADING COMPANIES BY BANKS, BANK HOLDING COMPANIES, AND INTERNATIONAL BANKING CORPORATIONS

SEC. 105. (a) For the purpose of this section—

(1) the term "banking organization" means any State bank, national bank, Federal savings bank, bankers' bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(2) the term "State bank" means any bank or bankers' bank which is incorporated under the laws of any State, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands;

(3) the term "State member bank" means any State bank which is a member of the Federal Reserve System;

(4) the term "State nonmember insured bank" means any State bank which is not a member of the Federal Reserve System, but the deposits of which are insured by the Federal Deposit Insurance Corporation;

(5) the term "bankers' bank" means any bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks (except to the extent directors' qualifying shares are required by law) and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors, or employees;

(6) the term "bank holding company" has the same meaning as in the Bank Holding Company Act of 1956;

(7) the term "Edge Act Corporation" means a corporation organized under section 25(a) of the Federal Reserve Act;

(8) the term "Agreement Corporation" means a corporation operating subject to section 25 of the Federal Reserve Act;

(9) the term "appropriate Federal banking agency" means—

(A) the Comptroller of the Currency with respect to a national bank or any bank located in the District of Columbia;

(B) the Board of Governors of the Federal Reserve System with respect to a State member bank, bank holding company, Edge Act Corporation, or Agreement Corporation;

(C) the Federal Deposit Insurance Corporation with respect to a State nonmember insured bank; and

(D) the Federal Home Loan Bank Board with respect to a Federal savings bank.

In any situation where the banking organization holding or making an investment in an export trading company is a subsidiary of another banking organization which is subject to the jurisdiction of another agency, and some form of agency approval or notification is required, such approval or notification need only be obtained from or made to, as the case may be, the appropriate Federal banking agency for the banking organization making or holding the investment in the export trading company;

(10) the term "capital and surplus" shall be defined by the appropriate Federal banking agency;

(11) an "affiliate" of a banking organization has the same meaning as an "affiliate" of a member bank under section 2 of the Banking Act of 1933, and, with respect to a bank holding company, includes any bank or other subsidiary of such company. the term "subsidiary" has the same meaning as in section 2 of the Bank Holding Company Act of 1956;

(12) the terms "control" and "subsidiary" shall have the same meanings assigned to those terms in section 2 of the Bank Holding Company Act of 1956, and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956, except that for purpose of the Export Trading Company Act of 1981, the determination of control as provided in section 2(a)(2) of the Bank Holding Company Act of 1956 shall be made by the appropriate Federal banking agency; and

(13) for the purposes of this section, the term "export trading company" means a company which does business under the laws of the United States or any State and which is exclusively engaged in activities related to international trade, whether operated for profit or as a nonprofit organization: *Provided, however,* That any such company must also either meet the definition of export trading company in section 103(a)(5) of this Act, or be organized and operated principally for the purpose of providing export trade services, as defined in section 103(a)(4) of this Act: *Provided further,* That any such company, for purposes of this section, (A) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that its banking organization investor may do so under applicable Federal and State banking law and regulations, and (B) may not engage in manufacturing or agricultural production activities.

(b)(1) Notwithstanding any prohibition, restriction, limitation, condition, or requirement of any law applicable only to banking organizations, a banking organization, subject to the limitations of subsection (c) and the procedures of this subsection, may invest directly and indirectly in the aggregate, up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of an Edge Act Corporation or Agreement Corporation not engaged in banking) in the voting stock or other evidences of ownership of one or more export trading companies. A banking organization may—

(A) invest up to an aggregate amount of $10,000,000 in one or more export trading companies without the prior approval of the appropriate Federal banking agency, if such investment does not cause an export trading company to become a subsidiary of the investing banking organization; and

(B) make investments in excess of an aggregate amount of $10,000,000 in one or more export trading companies, or make any investment or take any other action which causes an export trading company to become a subsidiary of the investing banking organization or which will cause more than 50 per centum of the voting stock of an export trading company to be owned or controlled by banking organizations, only with the prior approval of the appropriate Federal banking agency.

Any banking organization which makes an investment under authority of clause (A) of the preceding sentence shall promptly notify the appropriate Federal banking agency of such investment and shall file such reports on such investment as such agency may require. If, after receipt of any such notification, the appropriate Federal banking agency determines that the export trading company is a subsidiary of the investing banking organization, it shall have authority to disapprove the investment or impose conditions on such investment under authority of subsection (d). In furtherance of such authority, the appropriate Federal banking agency, after notice and opportunity for hearing, may require divestiture of any voting stock or other evidences of ownership previously acquired, and may impose

conditions necessary for the termination of any controlling relationship.

(2) If a banking organization proposes to make any investment or engage in any activity included within the following two subparagraphs, it must give the appropriate Federal banking agency ninety days prior written notice before it makes such investment or engages in such activity:

(A) any additional investment in an export trading company subsidiary; or

(B) the engagement by any export trading company subsidiary in any line of activity, including specifically the taking of title to goods, wares, merchandise, or commodities, if such activity was not disclosed in any prior application for approval.

During the notification period provided under this paragraph, the appropriate Federal banking agency may, by written notice, disapprove the proposed investment or activity or impose conditions on such investment or activity under authority of subsection (d). An additional investment or activity covered by this paragraph may be made or engaged in, as the case may be, prior to the expiration of the notification period if the appropriate Federal banking agency issues written notice of its intent not to disapprove.

(3) In the event of the failure of the appropriate Federal banking agency to act on any application for approval under paragraph (1)(B) of this subsection within a period of one hundred and twenty days, which period begins on the date the application has been accepted for processing by the appropriate Federal banking agency, the application shall be deemed to have been granted. In the event of the failure of the appropriate Federal banking agency either to disapprove or to impose conditions on any investment or activity subject to the prior notification requirements of paragraph (2) of this subsection within the ninety-day period provided therein, such period beginning on the date the notification has been received by the appropriate Federal banking agency, such investment or activity may be made or engaged in, as the case may be, any time after the expiration of such period.

(c) The following limitations apply to export trading companies and the investments in such companies by banking organizations:

(1) The name of any export trading company shall not be similar in any respect to that of a banking organization that owns any of its voting stock or other evidences of ownership except where a majority of the outstanding voting stock or other evidences of ownership of the company is owned or controlled by such banking organization.

(2) The total historical cost of the direct and indirect investments by a banking organization in an export trading company combined with extensions of credit by the banking organization and its direct and indirect subsidiaries to such export trading company shall not exceed 10 per centum of the banking organization's capital and surplus.

(3) A banking organization that owns any voting stock or other evidences of ownership of an export trading company may be required, by the appropriate Federal banking agency, to terminate its ownership or shall be subject to limitations or conditions which may be imposed by such agency, if the agency determines that the company has taken positions in commodities or commodities contracts, in securities, or in foreign exchange, other than as may be necessary in the course of its business operations.

(4) No banking organization holding voting stock or other evidences of ownership of any export trading company may extend credit or cause any affiliate to extend credit to any export trading company or to customers of such company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(d)(1) In the case of every application under subsection (b)(1)(B) of this section, the appropriate Federal banking agency shall take into consideration the financial and managerial resources, competitive situation, and future prospects of the banking organization and export trading company concerned, and the benefits of the proposal to United States business, industrial, and agricultural concerns (with special emphasis on small, medium-size, and minority concerns), and to improving United States competitiveness in world markets. The appropriate Federal banking agency may not approve any investment for which an application has been filed under subsection (b)(1)(B) if it finds that the export benefits of such proposal are outweighed in the public interest by any adverse financial, managerial, competitive, or other banking factors associated with the particular investment. Any disapproval order issued under this section must contain a statement of the reasons for disapproval.

(2) In approving any application submitted under subsection (b)(1)(B), the appropriate Federal banking agency may impose such conditions which, under the circumstances of such case, it may deem necessary (A) to limit a banking organization's financial exposure to an export trading company, or (B) to prevent possible conflicts of interest or unsafe or unsound banking practices. With respect to the taking of title to goods, wares, merchandise, or commodities by any export trading company subsidiary of a banking organization, the appropriate Federal banking agencies may, by order, regulation, or guidelines, establish standards designed to ensure against any unsafe or unsound practices that could adversely affect a controlling banking organization investor. In particular, the appropriate Federal banking agencies may establish inventory-to-capital ratios, based on the capital of the export trading company subsidiary, for those circumstances in which the export trading company subsidiary may bear a market risk on inventory held.

(3) In determining whether to impose any condition under the preceding paragraph (2), or in imposing such condition, the appropriate Federal banking agency must give due consideration to the size of the banking organization and export trading company involved, the degree of investment and other support to be provided by the banking organization to the export trading company, and the identity, character, and financial strength of any other investors in the export trading company. The appropriate Federal banking agency shall not impose any conditions or set standards for the taking of title which unnecessarily disadvantage, restrict, or limit export trading companies in competing in world markets or in achieving the purposes of section 102 of this Act. In particular, in setting standards for the taking of title under the preceding paragraph (2), the appropriate Federal banking agencies shall give special weight to the need to take title in certain kinds of trade transactions, such as international barter transactions.

(4) Notwithstanding any other provision of this Act, the appropriate Federal banking agency may, whenever it has reasonable cause to believe that the ownership or control of any investment in an export trading company constitutes a serious risk to the financial safety, soundness, or stability of the banking organization and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the banking organization, after due notice and opportunity for hearing, to terminate (within one hundred and twenty days or such longer period as the appropriate Federal banking agency may direct in unusual circumstances) its investment in the export trading company.

(5) On or before two years after enactment of this Act, the appropriate Federal banking agencies shall jointly report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives their recommendations with respect to the implementation of this section, their recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-size, and minority business concerns, and their recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

(6) The appropriate Federal banking agency may, by regulation or order, exempt from the collateral requirements of section 23A of the Federal Reserve Act any loan or extension of credit made by a national or State bank to an export trading company affiliate if the agency determines such exemption is necessary to finance the operating expenses of an affiliated export trading company and does not expose the bank to undue financial risks. This paragraph does not apply to bank affiliates currently exempt from the requirements of section 23A.

(e)(1) Any party aggrieved by an order of an appropriate Federal banking agency under this section may obtain a review of such order in the United States court of appeals within any circuit wherein such organization has its principal place of business, or in the court of appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the order was based. The court shall set aside any order found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege or immunity; (C) in excess of statutory jurisdiction, authority or limitations, or short of statutory right; or (D) without observance of procedure required by law.

(2) Except for violations of subsection (b)(3) of this section, the court shall remand for further consideration by the appropriate Federal banking agency any order set aside solely for procedural errors and may remand for further consideration by the appropriate Federal banking agency any order set aside for substantive errors. Upon remand, the appropriate Federal banking agency shall have no more than sixty days from date of issuance of the court's order to cure any procedural error or reconsider its prior order. If the agency fails to act within this period, the application or other matter subject to review shall be deemed to have been granted as a matter of law.

(f)(1) The appropriate Federal banking agencies are authorized and empowered to issue such rules, regulations, and orders, to require such reports, to delegate such functions, and to conduct such examinations of

subsidiary export trading companies, as each of them may deem necessary in order to perform their respective duties and functions under this section and to administer and carry out the provisions and purposes of this section and prevent evasions thereof.

(2) In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this section may be enforced under section 8 of the Federal Deposit Insurance Act by any appropriate Federal banking agency defined in that Act.

(g) Nothing in this section shall at any time prevent any State from adopting a law prohibiting banks chartered under the laws of such State from investing in export trading companies or applying conditions, limitations, or restrictions on investments by banks chartered under the laws of such State in export trading companies in addition to any conditions, limitations, or restrictions provided under this section.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 106. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other private creditors to export trading companies as defined in section 103(5) of this Act, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

TITLE II—EXPORT TRADE ASSOCIATIONS

SHORT TITLE

SEC. 201. This title may be cited as the "Export Trade Association Act of 1981".

FINDINGS; DECLARATION OF PURPOSE

SEC. 202. (a) FINDINGS.—The Congress finds and declares that—

(1) the exports of the American economy are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating $1 out of every $7 of total United States goods produced;

(2) exports will play an even larger role in the United States economy in the future in the face of severe competition from foreign government-owned and subsidized commercial entities;

(3) between 1953 and 1977 the United States share of total world exports fell from 19 per centum to 13 per centum;

(4) trade deficits contribute to the decline of the dollar on international currency markets, fueling inflation at home;

(5) service-related industries are vital to the well being of the American economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and represent a small but rapidly rising percentage of United States international trade;

(6) agriculture constitutes the foundation of the economy of the United States and will continue to be a leading sector in United States export growth;

(7) small and medium-sized firms are prime beneficiaries of joint exporting, through pooling of technical expertise, help in achieving economies of scale, and assistance in competing effectively in foreign markets; and

(8) the Department of Commerce has as one of its responsibilities the development and promotion of United States exports.

(b) PURPOSE.—It is the purpose of this title to encourage American exports by directing the Department of Commerce to encourage and promote the formation of export trade associations through the Webb-Pomerene Act, by making the provisions of that Act explicitly applicable to the exportation of services, and by transferring the responsibility for administering that Act from the Federal Trade Commission to the Secretary of Commerce.

DEFINITIONS

SEC. 203. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out the first section (15 U.S.C. 61) and inserting in lieu thereof the following:

"SECTION 1. DEFINITIONS.

"As used in this Act—

"(1) EXPORT TRADE.—The term 'export trade' means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported from the United States or any territory thereof to any foreign nation.

"(2) SERVICE.—The term 'service' means intangible economic output, including, but not limited to—

"(A) business, repair, and amusement services;

"(B) management, legal, engineering, architectural, and other professional services; and

"(C) financial, insurance, transportation, informational and any other data-based services, and communication services.

"(3) EXPORT TRADE ACTIVITIES.—The term 'export trade activities' means activities or agreements in the course of export trade.

"(4) METHODS OF OPERATION.—The term 'methods of operation' means the methods by which an association or export trading company conducts or proposes to conduct export trade.

"(5) TRADE WITHIN THE UNITED STATES.—The term 'trade within the United States' whenever used in this Act means trade or commerce among the several States or in any territory of the United States, or in the District of Columbia, or between any such territory and another, or between any such territory or territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

"(6) ASSOCIATION.—The term 'association' means any combination, by contract or other arrangement, of persons who are citizens of the United States, partnerships which are created under and exist pursuant to the laws of any State or of the United States, or corporations, whether operated for profit or organized as nonprofit corporations, which are created under and exist pursuant to the laws of any State or of the United States.

"(7) EXPORT TRADING COMPANY.—The term 'export trading company' means an export trading company as defined in section 103.5) of the Export Trading Company Act of 1981.

"(8) ANTITRUST LAWS.—The term 'antitrust laws' means the antitrust laws defined in the first section of the Clayton Act (15 U.S.C. 12), sections 5 and 6 of the Federal Trade Commission Act (15 U.S.C. 45, 46), and any State antitrust or unfair competition law.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of Commerce.

"(10) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(11) COMMISSION.—The term 'Commission' means the Federal Trade Commission.".

ANTITRUST EXEMPTION

SEC. 204. The Webb-Pomerene Act (15 U.S.C. 61–66) is amended by striking out section 2 (15 U.S.C. 62) and inserting in lieu thereof the following:

"SEC. 2. EXEMPTION FROM ANTITRUST LAWS.

"(a) ELIGIBILITY.—The export trade, export trade activities, and methods of operation of any association, entered into for the sole purpose of engaging in export trade, and engaged in or proposed to be engaged in such export trade, and the export trade, export trade activities and methods of operation of any export trading company, that—

"(1) serve to preserve or promote export trade;

"(2) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of such association or export trading company;

"(3) do not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(4) do not constitute unfair methods of competition against competitors engaged in the export trade of goods, wares, merchandise, or services of the class exported by such association or export trading company;

"(5) do not include any act which results, or may reasonably be expected to result, in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the association or export trading company or its members; and

"(6) do not constitute trade or commerce in the licensing of patents, technology, trademarks, or know-how, except as incidental to the sale of the goods, wares, merchandise, or services exported by the association or export trading company or its members

shall, when certified according to the procedures set forth in this Act, be eligible for the exemption provided in subsection (b).

"(b) EXEMPTION.—An association or an export trading company and its members are exempt from the operation of the antitrust laws with respect to their export trade, export trade activities and methods of operation that are specified in a certificate issued according to the procedures set forth in this Act, carried out in conformity with the provisions, terms, and conditions prescribed in such certificate and engaged in during the period in which such certificate is in effect. The subsequent revocation in whole or in part of such certificate shall not render an association or its members or an export trading company or its members, liable under the antitrust laws for such export trade, export trade activities, or methods of operation engaged in during such period.

"(c) DISAGREEMENT OF ATTORNEY GENERAL OR COMMISSION.—Whenever, pursuant to section 4(b)(1) of this Act, the Attorney General or the Commission has formally advised the Secretary of disagreement with his determination to issue a proposed certificate, and the Secretary nevertheless issued such proposed certificate or an amended certificate, the exemption provided by this section shall not be effective

until thirty days after the issuance of such certificate.".

AMENDMENT OF SECTION 3

SEC. 205. The Webb-Pomerene Act (15 U.S.C. 61-66) is amended—

(1) by inserting immediately before section 3 (15 U.S.C. 63) the following:

"SEC. 2. OWNERSHIP INTEREST IN OTHER TRADE ASSOCIATIONS PERMITTED.",

and

(2) by striking out "SEC. 3. That nothing" in section 3 and inserting in lieu thereof "Nothing".

ADMINISTRATION; ENFORCEMENT; REPORTS

SEC. 206. (a) IN GENERAL.—The Webb-Pomerene Act (15 U.S.C. 61-66) is amended by striking out sections 4 and 5 (15 U.S.C. 64 and 65) and inserting in lieu thereof the following sections:

"SEC. 4. CERTIFICATION.

"(a) PROCEDURE FOR APPLICATION.—Any association or export trading company seeking certification under this Act shall file with the Secretary a written application for certification setting forth the following:

"(1) The name of the association or export trading company.

"(2) The location of all of the offices or places of business of the association or export trading company in the United States and abroad.

"(3) The names and addresses of all of the officers, stockholders, and members of the association or export trading company.

"(4) A copy of the certificate or articles of incorporation and bylaws, if the association or export trading company is a corporation; or a copy of the articles, partnership, joint venture, or other agreement or contract under which the association or export trading company conducts or proposes to conduct its export trade activities, or contract of association, if the association or export trading company is unincorporated.

"(5) A description of the goods, wares, merchandise, or services which the association or export trading company or their members export or propose to export.

"(6) A description of the domestic and international conditions, circumstances, and factors which show that the association or export trading company and its activities will serve a specified need in promoting the export trade of the described goods, wares, merchandise, or services.

"(7) The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods, wares, merchandise, or services, including, but not limited to, any agreements to sell exclusively to or through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company.

"(8) The names of all countries where export trade in the described goods, wares, merchandise, or services is conducted or proposed to be conducted by or through the association or export trading company.

"(9) Any other information which the Secretary may request concerning the organization, operation, management, or finances of the association or export trading company; the relation of the association or export trading company to other associations, corporations, partnerships, and individuals; and competition or potential competition, and effects of the association or export trading company thereon. The Secretary may request such information as part of an initial application or as a necessary supplement thereto. The Secretary may not request information under this paragraph which is not reasonably available to the person making application or which is not necessary for certification of the prospective association or export trading company.

"(b) ISSUANCE OF CERTIFICATE.—

"(1) NINETY-DAY PERIOD.—The Secretary shall issue a certificate to an association or export trading company within ninety days after receiving the application for certification or necessary supplement thereto if the Secretary, after consultation with the Attorney General and Commission, determines that the association and, its export trade, export trade activities and methods of operation, or export trading company, and its export trade, export trade activities and methods of operation meet the requirements of section 2 of this Act and will serve a specified need in promoting the export trade of the goods, wares, merchandise, or services described in the application for certification. The certificate shall specify the permissible export trade, export trade activities and methods of operation of the association or export trading company and shall include any terms and conditions the Secretary deems necessary to comply with the requirements of section 2 of this Act. The Secretary shall deliver to the Attorney General and the Commission a copy of any certificate that he proposes to issue. The Attorney General or Commission may, within fifteen days thereafter, give written notice to the Secretary of an intent to offer advice on the determination. The Attorney General or Commission may, after giving such written notice and within forty-five days of the time the Secretary has delivered a copy of a proposed certificate, formally advise the Secretary and the petitioning association or export trading company of disagreement with the Secretary's determination. The Secretary shall not issue any certificate prior to the expiration of such forty-five-day period unless he has (A) received no notice of intent to offer advice by the Attorney General or the Commission within fifteen days after delivering a copy of a proposed certificate, or (B) received any noticed formal advice of disagreement or written confirmation that no formal disagreement will be transmitted from the Attorney General and the Commission. After the forty-five-day period or, if no notice of intent to offer advice has been given, after the fifteen-day period, the Secretary shall either issue the proposed certificate, issue an amended certificate, or deny the application. Upon agreement of the applicant, the Secretary may delay taking action for not more than thirty additional days after the forty-five-day period. Before offering advice on a proposed certification, the Attorney General and Commission shall consult in an effort to avoid, wherever possible, having both agencies offer advice on any application.

"(2) EXPEDITED CERTIFICATION.—In those instances where the temporary nature of the export trade activities, deadlines for bidding on contracts or filling orders, or any other circumstances beyond the control of the association or export trading company which have a significant impact on its export trade, make the ninety-day period for application approval described in paragraph (1) of this subsection, or an amended application approval as provided in subsection (c) of this section, impractical for the association or export trading company seeking certification, such association or export trading company may request and may receive expedited action on its application for certification.

"(3) AUTOMATIC CERTIFICATION FOR EXISTING ASSOCIATIONS.—Any association registered with the Federal Trade Commission under this Act as of January 19, 1981, may file with the Secretary an application for automatic certification of any export trade, export trade activities, and methods of operation in which it was engaged prior to enactment of the Export Trade Association Act of 1981. Any such application must be filed within one hundred and eighty days after the date of enactment of such Act and shall be acted upon by the Secretary in accordance with the procedures provided by this section. The Secretary shall issue to the association a certificate specifying the permissible export trade, export trade activities, and methods of operation that he determines are shown by the application (including any necessary supplement thereto), on its face, to be eligible for certification under this Act, and including any terms and conditions the Secretary deems necessary to comply with the requirements of section 2(a) of this Act, unless the Secretary possesses information clearly indicating that the requirements of section 2(a) are not met.

"(4) APPEAL OF DETERMINATION.—If the Secretary determines not to issue a certificate to an association or export trading company which has submitted an application for certification, or for an amendment of a certificate, then he shall—

"(A) notify the association or export trading company of his determination and the reasons for his determination, and

"(B) upon request made by the association or export trading company, afford it an opportunity for reconsideration with respect to that determination.

"(c) MATERIAL CHANGES IN CIRCUMSTANCES; AMENDMENT OF CERTIFICATE.—Whenever there is a material change in the membership, export trade activities, or methods of operation, of an association or export trading company then it shall report such change to the Secretary and may apply to the Secretary for an amendment of its certificate. Any application for an amendment to a certificate shall set forth the requested amendment of the certificate and the reasons for the requested amendment. Any request for the amendment of a certificate shall be treated in the same manner as an original application for a certificate.

"(d) AMENDMENT OR REVOCATION OF CERTIFICATE BY SECRETARY.—

"(1) The Secretary on his own initiative shall, upon a determination that the export trade, export trade activities or methods of operation of an association or export trading company no longer comply with the requirements of section 2 of this Act, revoke its certificate or make such amendments as may be necessary to comply with the requirements of such section.

"(2) Prior to revoking or amending a certificate, the Secretary shall—

"(A) notify the holder of the certificate in writing of the facts of conduct which may warrant the action, and

"(B) provide the holder of the certificate an opportunity for such hearing as may be appropriate in the circumstances.

"(3) Before revoking or amending a certificate pursuant to this subsection the Secretary may in his discretion provide the holder of the certificate an opportunity to achieve compliance within a reasonable period of time not to exceed ninety days, except that nothing in this paragraph shall affect any action under section 4(e) of this Act.

"(e) ACTION FOR REVOCATION OF CERTIFICATE BY ATTORNEY GENERAL OR COMMISSION.—

"(1) The Attorney General or the Commission may bring an action against an association or export trading company or its members to invalidate, in whole or in part, its certificate on the ground that the export trade, export trade activities or methods of operation of the association or export trading company fail or have failed to meet the requirements of section 2 of this Act. Except in the case of an action brought during the period before an antitrust exemption becomes effective, as provided for in section 2(c), the Attorney General or Commission shall notify any association or export trading company or member thereof, against which it intends to bring an action for revocation thirty days in advance, as to its intent to file an action under this subsection. The district court shall consider any issues presented in any such action de novo and if it finds that the requirements of section 2 are not met, it shall issue an order revoking the certificate or any other order necessary to effectuate the purposes of this Act and the requirements of section 2.

"(2) Any action brought under this subsection shall be considered an action described in section 1337 of title 28, United States Code. Pending any such action which was brought during the period any exemption is held in abeyance pursuant to section 2(e) of this Act, the court may make such temporary restraining order or prohibition as shall be deemed just in the premises.

"(3) No person other than the Attorney General or Commission shall have standing to bring an action against an association or export trading company or their respective members for failure of the association or export trading company or their respective export trade, export trade activities or methods of operation to meet the eligibility requirements of section 2 of this Act.

"(f) COMPLIANCE WITH OTHER LAWS.—Each association and each export trading company and any subsidiary thereof shall comply with United States export control laws pertaining to the export or transshipment of any goods on the Commodity Control List to controlled countries. Such laws shall be complied with before actual shipment.

"(g) JUDICIAL REVIEW.—Final orders of the Secretary under this section shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code.

"SEC. 5. GUIDELINES.

"(a) INITIAL PROPOSED GUIDELINES.—Within ninety days after the enactment of the Export Trade Association Act of 1981, the Secretary, after consultation with the Attorney General, and the Commission shall publish proposed guidelines for purposes of determining whether export trade, export trade activities and methods of operation of an association or export trading company will meet the requirements of section 2 of this Act.

"(b) PUBLIC COMMENT PERIOD.—Following publication of the proposed guidelines, and any proposed revision of guidelines, interested parties shall have thirty days to comment on the proposed guidelines. The Secretary shall review the comments and, after consultation with the Attorney General, and Commission, publish final guidelines within thirty days after the last day on which comments may be made under the preceding sentence.

"(c) PERIODIC REVISION.—After publication of the final guidelines, the Secretary shall periodically review the guidelines and, after consultation with the Attorney General, and the Commission, propose revisions as needed.

"(d) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—The promulgation of guidelines under this section shall not be considered rulemaking for purposes of subchapter II of chapter 5 of title 5, United States Code, and section 553 of such title shall not apply to their promulgation.

"SEC. 6. ANNUAL REPORTS.

"Every certified association or export trading company shall submit to the Secretary an annual report, in such form and at such time as he may require, which report updates where necessary the information described by section 4(a) of this Act.

"SEC. 7. CONFIDENTIALITY OF APPLICATION AND ANNUAL REPORT INFORMATION.

"(a) GENERAL RULE.—Portions of applications made under section 4, including amendments to such applications, and annual reports made under section 6 that contain trade secrets or confidential business or financial information, the disclosure of which would harm the competitive position of the person submitting such information shall be confidential, and, except as authorized by this section, no officer or employee, or former officer or employee, of the United States shall disclose any such confidential information, obtained by him in any manner in connection with his service as such an officer or employee.

"(b) DISCLOSURE TO ATTORNEY GENERAL OR COMMISSION.—Whenever the Secretary believes that an applicant may be eligible for a certificate, or has issued a certificate to an association or export trading company, he shall promptly make available all materials filed by the applicant, association or export trading company, including applications and supplements thereto, reports of material changes, applications for amendments and annual reports, and information derived therefrom, to the Attorney General or Commission, or any employee or officer thereof, for official use in connection with an investigation or judicial or administrative proceeding under this Act or the antitrust laws to which the United States or the Commission is or may be a party. Such information may only be disclosed by the Secretary upon a prior certification that the information will be maintained in confidence and will only be used for such official law enforcement purposes.

"SEC. 8. MODIFICATION OF ASSOCIATION TO COMPLY WITH UNITED STATES OBLIGATIONS.

"At such time as the United States undertakes binding international obligations by treaty or statute, to the extent that the operations of any export trade association or export trading company, certified under this Act, are inconsistent with such international obligations, the Secretary may require the association or export trading company to modify its respective operations, and in so doing afford the association or export trading company a reasonable opportunity to comply therewith, so as to be consistent with such international obligations.

"SEC. 9. REGULATIONS.

"The Secretary, after consultation with the Attorney General and the Commission, shall promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

"SEC. 10. TASK FORCE STUDY.

"Seven years after the date of enactment of the Export Trade Association Act of 1981, the President shall appoint, by and with the advice and consent of the Senate, a task force to examine the effect of the operation of this Act on domestic competition and on United States international trade and to recommend either continuation, revision, or termination of the Webb-Pomerene Act. The task force shall have one year to conduct its study and to make its recommendations to the President.".

(b) REDESIGNATION OF SECTION 6.—The Act is amended—

(1) by striking out "SEC. 6." in section 6 (15 U.S.C. 66), and

(2) by inserting immediately before such section the following:

"SEC. 11. SHORT TITLE.".

EFFECTIVE DATE WITH REGARD TO EXISTING ASSOCIATIONS

SEC. 207. (a) GENERAL RULE.—The amendments to the Webb-Pomerene Act set forth in sections 203, 204, 205, and 206 of this Act shall become effective with regard to an existing association described in subsection (b) only at such time as the association may elect to be certified pursuant to subsection (c).

(b) ELECTION TO CONTINUE UNDER PRIOR LAW.—Application of the antitrust laws to any association which as of January 1, 1981, had filed with the Commission the information specified under section 5 of the Webb-Pomerene Act as in effect immediately prior to the date of enactment of this Act shall continue to be governed by the standards set forth in that Act, unless such association elects to seek certification under subsection (c).

(c) ELECTION TO APPLY FOR CERTIFICATION.—Any association to which subsection (b) applies may, at any time after the effective date of this Act, file an application for certification with the Secretary containing the information set forth in section 4(a) of the Webb-Pomerene Act, as amended by section 206 of this Act. The Secretary shall consider and act upon such application in the manner provided in section 4(b) of the Webb-Pomerene Act, as amended by section 206 of this Act. The association filing an application pursuant to this subsection shall continue to be subject to subsection (b) of this section until the Secretary issues a certificate and such certificate has been accepted by the association; the association must decide whether or not to accept such certificate no later than thirty days after the Secretary's determination with respect thereto has become final.

MOTION OFFERED BY MR. ZABLOCKI

Mr. ZABLOCKI. Mr. Speaker, I offer a motion. It is to amend S. 734 with the text of section 1 through 4 and title II of H.R. 1799 and the text of H.R. 6016.

The Clerk read as follows:

Mr. ZABLOCKI moves to strike out all after the enacting clause of the Senate bill (S. 734) and to insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as "The Export Trading Company Act of 1982".

TITLE I—GENERAL PROVISIONS

FINDINGS; DECLARATION OF PURPOSE

SEC. 101. (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 percent of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency mar-

kets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(6) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(7) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(8) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(9) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(10) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by permitting bank holding companies and bankers' banks to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade.

DEFINITIONS

SEC. 102. For purposes of this section and sections 101 and 103 of this Act—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes amusement, architectural, automatic data processing, business, communications, consulting, engineering, financial, insurance, legal, management, repair, training, and transportation services;

(3) the term "export trade services" includes international market research, advertising, marketing, insurance, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, and financing, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means any person, corporation, partnership, association, or similar organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "export trade association" means an association engaged solely in export trade which is exempt from the antitrust laws under the Webb-Pomerene Act;

(6) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(7) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 103. The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

TITLE II—BANK EXPORT SERVICES

SHORT TITLE

SEC. 201 This title may be cited as the "Bank Export Services Act".

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 202. Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

"(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

"(ii) The period for disapproval may be extended for such additional thirty day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

"(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(iv) The Board may disapprove any proposed investment only if—

"(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

"(II) the financial or managerial resources of the companies involved warrant disapproval; or

"(III) the bank holding company fails to furnish the information required under clause (iii).

"(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

"(vi) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

"(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

"(ii) No provision of any other Federal law in effect on the date of the enactment of this paragraph relating specifically to collateral requirements shall apply with respect to any such extension of credit.

"(iii) No bank holding company which invests in an export trading company may extend credit or cause any subsidiary to extend credit to any export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(C) For purposes of this paragraph, an export trading company—

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

"(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification, including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

"(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

"(E) For purposes of this paragraph—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State and which is organized and operated

exclusively for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services. Any export trading company may perform such importing or other activities as are reasonably related to and incident to an export transaction, if the overall effect of such activities is to enhance the exportation of goods or services produced in the United States;

"(ii) the term 'export trade services' includes consulting, international market research, advertising, marketing, product research and design, legal assistance, transportation (including trade documentation and freight forwarding), communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when such services are provided in order to facilitate the export of goods or services produced in the United States;

"(iii) the term 'bank holding company' shall include a bank which (I) is organized solely to do business with other banks and their officers, directors or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

"(iv) the term 'extension of credit' shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.".

BANKERS' ACCEPTANCES

SEC. 203. The seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372) is amended to read as follows:

"(7)(A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as 'institutions'), accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

"(i) which grow out of transactions involving the importation or exportation of goods;

"(ii) which grow out of transactions involving the domestic shipment of goods; or

"(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

"(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participating share in such acceptances, authorized for such institution under this paragraph.

"(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

"(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

"(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this paragraph shall apply.

"(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction.".

TITLE III—EXPORT TRADE CERTIFICATES OF REVIEW

EXPORT TRADE PROMOTION DUTIES OF ATTORNEY GENERAL

SEC. 301. To promote and encourage export trade, the Attorney General may issue certificates of review. The Secretary of Commerce, in carrying out his responsibilities to promote the export of goods and services of the United States, may advise and assist persons with respect to applying for certificates of review.

APPLICATION FOR ISSUANCE OF CERTIFICATE OF REVIEW

SEC. 302. (a) To request the issuance of a certificate of review, a person shall submit to the Secretary of Commerce or the Attorney General a written application which—

(1) specifies conduct limited to export trade, and

(2) is in a form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule issued under section 311.

Each application received by the Secretary of Commerce shall be forwarded, not later than 7 days after receipt, to the Attorney General.

(b)(1) With respect to each application submitted under subsection (a), the Attorney General shall publish in the Federal Register notice that a certificate of review has been requested, the identity of each person requesting the certificate, and a description of the conduct with respect to which the certificate is requested. The notice shall be so published promptly, but not later than 10 days, after the application is received by the Attorney General.

(2) The Attorney General may not issue the certificate until the expiration of the 30-day period beginning on the date the application is received by the Attorney General.

ISSUANCE OF CERTIFICATE

SEC. 303. (a) The attorney General shall issue a certificate of review to an applicant for the certificate if the application for the certificate satisfies the requirements of section 302, unless the Attorney General determines under subsection (b) that the conduct specified in the application is likely to result in a violation of the antitrust laws.

(b)(1) Not later than 60 days after the Attorney General receives an application under section 302, the Attorney General shall determine whether the conduct specified in the application is likely to result in a violation of the antitrust laws, except that if before the expiration of the 60-day period the Attorney General requests that the applicant submit additional information, the Attorney General shall make the determination not later than the expiration of the 60-day period, or of the 30-day period beginning on the date the additional information is submitted, whichever period ends later.

(2) Unless the Attorney General determines that the conduct specified in the application is likely to result in a violation of the antitrust laws, the Attorney General shall immediately issue a certificate of review to the applicant. If the Attorney General determines that the conduct specified in the application is likely to result in a violation of the antitrust laws, the Attorney General shall promptly transmit to the applicant a statement of the determination and the reasons in support of the determination.

(c) If the Attorney General denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of all documents submitted by the applicant in connection with the issuance of the certificate, the Attorney General shall return to the applicant, not later than 30 days after receiving the request, the documents and all copies of the documents available to the Attorney General, except to the extent that the information contained in a document has been made available to the public.

(d) The Attorney General shall specify in each certificate of review issued under this section—

(1) the conduct, including activities and methods of operation, to which the certificate applies,

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions applicable to the conduct.

(e) A certificate of review obtained by fraud is void ab initio.

REPORTING REQUIREMENT; AMENDMENT OF CERTIFICATE

(1) SEC. 304. (a) any person who receives a certificate of review—

(1) shall promptly report to the Attorney General any change relevant to the matters specified under section 303(d) in the certificate, and

(2) may submit to the Attorney General an application to amend the certificate to reflect the fact or effect of the change on the conduct specified in the certificate.

(b) For purposes of section 302 and section 303, an application for an amendment to a certificate of review shall be deemed to be

an application for the issuance of a certificate of review, except that the effective date of the amendment shall be the date on which the application for the amendment is submitted to the Attorney General.

MODIFICATION OR REVOCATION OF CERTIFICATE

SEC. 305. (a) If at any time the Attorney General determines that the conduct engaged in under a certificate of review violates or is likely to result in a violation of the antitrust laws, the Attorney General shall give written notice of the determination to the person to whom the certificate was issued. The notice shall include a statement of the reasons in support of the determination. In the 30-day period beginning 30 days after the notice is given, the Attorney General shall modify or revoke the certificate, as may be appropriate.

(b) The person to whom the affected certificate was issued may bring an action in any appropriate district court of the United States to set aside the determination made under subsection (a) on the ground that the determination is erroneous.

JUDICIAL REVIEW; ADMISSIBILITY

SEC. 306. (a) Except as provided in section 305(b), no determination made by the Attorney General with respect to the issuance, amendment, or revocation of a certificate of review shall be subject to judicial review.

(b) No determination made by the Attorney General with respect to the issuance, amendment, or revocation of a certificate of review shall be admissible in evidence in any administrative or judicial proceeding in support of any claim under the antitrust laws.

PROTECTION CONFERRED BY CERTIFICATE OF REVIEW

SEC. 307. (a) No person to whom a certificate of review is issued shall be subject to a criminal action for a violation of the antitrust laws or a violation of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(b) No person to whom a certificate of review is issued shall be liable for damages in a civil action brought by the Attorney General for a violation of the antitrust laws or of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(c)(1) No person to whom a certificate of review is issued shall be liable for damages exceeding actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for a violation of the antitrust laws or of any State law similar to the antitrust laws if the conduct that forms the basis of the action is specified in the certificate and if the certificate is in effect at the time the conduct occurs.

(2) If, with respect to any claim under section 4 of the Clayton Act (15 U.S.C. 15) brought against the person, the court finds that—

(A) the conduct alleged to violate the antitrust laws does not violate the antitrust laws,

(B) the conduct is conduct specified in a certificate of review, and

(C) the certificate of review was in effect at the time the conduct occurred,

the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(d) No person to whom a certificate of review is issued shall be liable under section 16 of the Clayton Act (15 U.S.C. 26), or any State antitrust law similar to such section, with respect to threatened loss or damage by violation of the antitrust laws or of any State law similar to the antitrust laws if the threatened loss or damage arises from conduct specified in the certificate of review and if the certificate is in effect at the time the conduct occurs.

INJUNCTIVE RELIEF

SEC. 308. Except as provided in section 307(d), a certificate of review shall have no legal effect on the authority of a court to grant equitable relief in an action for a violation of the antitrust laws brought against the person to whom the certificate is issued. In granting the relief, the court shall have jurisdiction to modify or revoke the certificate of review, as may be appropriate.

DISCLOSURE OF INFORMATION

SEC. 309. (a) Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5, United States Code.

(b)(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Attorney General deems disclosure of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule issued under section 311 permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

DESCRIPTIVE GUIDELINES

SEC. 310. (a) To promote greater certainty regarding the application of the antitrust laws to export trade, the Attorney General may issue guidelines—

(1) describing specific types of conduct with respect to which the Attorney General has made, or would make, determinations under section 303 and section 305, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Section 553 of title 5, United States Code, shall not apply to the issuance of guidelines under subsection (a).

ISSUANCE OF RULES

SEC. 311. Not later than 120 days after the date of the enactment of this Act, the Attorney General shall issue rules to carry out this title.

DEFINITIONS

SEC. 312. For purposes of this title—

(1) the term "antitrust laws" shall have the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that the term shall include section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition,

(2) the term "Attorney General" means the Attorney General of the United States or his designee,

(3) the term "certificate of review" means a certificate issued by the Attorney General under section 303,

(4) the term "export trade" means the export of goods or services from the United States to foreign nations, and

(5) the term "State" shall have the meaning given it in section 4G of the Clayton Act (15 U.S.C. 15g).

EFFECTIVE DATES

SEC. 313. (a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(b) Section 302 and section 303 shall take effect 90 days after the effective date of the rules first issued under section 311.

Mr. ZABLOCKI (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. ZABLOCKI).

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to encourage exports by establishing in the Department of Commerce an office to promote the formation of export trade associations and export trading companies, by permitting bank holding companies and bankers' banks to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade, and for other purposes."

Two similar House bills (H.R. 1799 and H.R. 6016) were laid on the table.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill (S. 734) and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin? The Chair hears none and, without objection, appoints the following conferees:

For title I of the House amendment and modifications committed to conference: Messrs. ZABLOCKI, BINGHAM, ECKART, BONKER, WOLPE, SHAMANSKY, BROOMFIELD, LAGOMARSINO, ERDAHL, and GILMAN, and Mrs. FENWICK;

For title II of the House amendment and modifications committed to conference: Messrs. ST GERMAIN, ANNUNZIO, MINISH, LAFALCE, BARNARD, STANTON of Ohio, WYLIE, MCKINNEY, and LEACH of Iowa; and

For title III of the House amendment and modifications committed to

conference: Messrs. RODINO, SEIBERLING, HUGHES, MCCLORY, and BUTLER.

There was no objection.

VETERANS' DISABILITY COMPENSATION AND SURVIVORS' BENEFITS AMENDMENTS OF 1982

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 6782, as amended.

The Clerk read the title of the bill.

□ 1450

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. MONTGOMERY) that the House suspend the rules and pass the bill, H.R. 6782, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 400, nays 0, not voting 34, as follows:

[Roll No. 215]

YEAS—400

Addabbo	Conte	Forsythe
Akaka	Conyers	Fowler
Albosta	Corcoran	Frank
Alexander	Coughlin	Frenzel
Anderson	Courter	Frost
Andrews	Coyne, James	Fuqua
Annunzio	Coyne, William	Garcia
Anthony	Craig	Gaydos
Applegate	Crane, Philip	Gejdenson
Archer	D'Amours	Gephardt
Ashbrook	Daniel, Dan	Gibbons
Aspin	Daniel, R. W.	Gilman
Atkinson	Daschle	Gingrich
AuCoin	Daub	Glickman
Badham	Davis	Goldwater
Bafalis	de la Garza	Gonzalez
Bailey (MO)	Deckard	Goodling
Bailey (PA)	Dellums	Gore
Barnard	Derrick	Gradison
Barnes	Derwinski	Gramm
Beard	Dickinson	Gray
Bedell	Dicks	Green
Beilenson	Dingell	Gregg
Benedict	Dixon	Grisham
Benjamin	Donnelly	Guarini
Bennett	Dorgan	Gunderson
Bereuter	Dowdy	Hagedorn
Bethune	Downey	Hall (OH)
Bevill	Dreier	Hall, Ralph
Bingham	Duncan	Hall, Sam
Bliley	Dunn	Hamilton
Boggs	Dwyer	Hammerschmidt
Boland	Dyson	Hance
Boner	Early	Hansen (UT)
Bonker	Eckart	Harkin
Bouquard	Edgar	Hartnett
Bowen	Edwards (AL)	Hatcher
Breaux	Edwards (CA)	Hawkins
Brinkley	Edwards (OK)	Heckler
Brodhead	Emerson	Hefner
Brooks	Emery	Heftel
Broomfield	English	Hendon
Brown (CA)	Erdahl	Hertel
Brown (CO)	Erlenborn	Hightower
Broyhill	Ertel	Hiler
Burgener	Evans (DE)	Hillis
Burton, Phillip	Evans (IA)	Holland
Butler	Evans (IN)	Hollenbeck
Byron	Fary	Holt
Campbell	Fascell	Hopkins
Carman	Fazio	Horton
Carney	Fenwick	Howard
Chappell	Ferraro	Hoyer
Chappie	Fiedler	Hubbard
Cheney	Fields	Huckaby
Chisholm	Findley	Hughes
Clausen	Fish	Hunter
Clinger	Fithian	Hutto
Coats	Flippo	Hyde
Coelho	Florio	Ireland
Coleman	Foglietta	Jacobs
Collins (TX)	Foley	Jeffords
Conable	Ford (MI)	Jeffries
Jenkins	Murphy	Shelby
Johnston	Murtha	Shumway
Jones (NC)	Myers	Shuster
Jones (OK)	Napier	Simon
Kastenmeier	Natcher	Skeen
Kazen	Neal	Skelton
Kemp	Nelligan	Smith (AL)
Kennelly	Nelson	Smith (IA)
Kildee	Nichols	Smith (NE)
Kindness	Nowak	Smith (NJ)
Kogovsek	O'Brien	Smith (OR)
Kramer	Oberstar	Smith (PA)
LaFalce	Obey	Snowe
Lagomarsino	Ottinger	Snyder
Lantos	Oxley	Solarz
Latta	Panetta	Solomon
Leach	Parris	Spence
LeBoutillier	Pashayan	St Germain
Lee	Patman	Stangeland
Lehman	Patterson	Stanton
Lent	Paul	Stark
Lewis	Pease	Stenholm
Livingston	Perkins	Stokes
Loeffler	Petri	Stratton
Long (LA)	Peyser	Studds
Long (MD)	Pickle	Stump
Lott	Porter	Swift
Lowery (CA)	Price	Synar
Lowry (WA)	Pritchard	Tauke
Lujan	Pursell	Tauzin
Luken	Quillen	Taylor
Lundine	Railsback	Thomas
Lungren	Rangel	Traxler
Madigan	Ratchford	Trible
Markey	Regula	Udall
Marlenee	Reuss	Vander Jagt
Marriott	Rhodes	Vento
Martin (IL)	Richmond	Volkmer
Martin (NC)	Rinaldo	Walgren
Martin (NY)	Ritter	Walker
Martinez	Roberts (KS)	Wampler
Matsui	Roberts (SD)	Washington
Mattox	Robinson	Watkins
Mavroules	Rodino	Waxman
Mazzoli	Roe	Weaver
McClory	Roemer	Weber (OH)
McCollum	Rogers	Weiss
McCurdy	Rose	White
McDade	Rosenthal	Whitehurst
McDonald	Rostenkowski	Whitley
McEwen	Roth	Whittaker
McGrath	Roukema	Whitten
McHugh	Rousselot	Williams (MT)
McKinney	Roybal	Williams (OH)
Mica	Rudd	Wilson
Michel	Russo	Winn
Mikulski	Sabo	Wirth
Miller (CA)	Santini	Wolf
Miller (OH)	Savage	Wolpe
Mineta	Sawyer	Wortley
Minish	Scheuer	Wright
Mitchell (MD)	Schneider	Wyden
Mitchell (NY)	Schroeder	Wylie
Moakley	Schulze	Yatron
Molinari	Schumer	Young (AK)
Mollohan	Seiberling	Young (FL)
Montgomery	Sensenbrenner	Young (MO)
Moore	Shamansky	Zablocki
Moorhead	Shannon	Zeferetti
Morrison	Sharp	
Mottl	Shaw	

NOT VOTING—34

Biaggi	Dornan	Marks
Blanchard	Dougherty	McCloskey
Bolling	Dymally	Moffett
Bonior	Evans (GA)	Oakar
Brown (OH)	Ford (TN)	Pepper
Burton, John	Fountain	Rahall
Clay	Gunn	Sisisky
Collins (IL)	Hansen (ID)	Staton
Crane, Daniel	Jones (TN)	Weber (MN)
Crockett	Leath	Yates
Dannemeyer	Leland	
DeNardis	Levitas	

□ 1500

Mr. BROWN of Colorado changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION FOR SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS AND SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT OF COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION TO SIT DURING 5-MINUTE RULE ON THURSDAY, JULY 29, 1982

Mr. FARY. Mr. Speaker, I ask unanimous consent that the Subcommittee on Public Buildings and Grounds and the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation may have permission to sit on Thursday, July 29, 1982, while the House is in session under the 5-minute rule.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. KRAMER. Mr. Speaker, reserving the right to object, I would like to pose an inquiry of the gentleman from Illinois. Could the gentleman tell us what this is all about, please?

□ 1510

Mr. FARY. Mr. Speaker, if the gentleman will yield, the purpose of the hearing will be to inquire into a reported sale of Federal property located at 49 Fourth Street in San Francisco, Calif., which was recently declared excess to the needs of the Federal Government by the General Services Administration. The subcommittee will not be considering any legislation therefore, but instead, holding what I perceive to be an oversight hearing, which should last half an hour.

Mr. KRAMER. Mr. Speaker, further reserving the right to object, can the gentleman tell me whether he has spoken to the gentleman from Minnesota (Mr. STANGELAND) about this hearing?

Mr. FARY. Yes.

Mr. KRAMER. And he has no objections?

Mr. FARY. Yes.

Mr. KRAMER. Yes, he has no objection?

Mr. FARY. None.

Mr. KRAMER. Mr. Speaker, I withdraw my reservation of objection, and I thank the gentleman for his response.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1983

Mr. PRICE. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill—H.R. 6030—to authorize appropriations for fiscal year 1983 for the Armed Forces, for procurement, for research, development, test and evaluation, and for operation and maintenance, to prescribe personnel strengths for such fiscal

those in Congress who are backing this amendment know it is a political cheap shot, and we think it won't be long before most voters understand that too. Politicians can peddle herpetological emollient only so long before the voters discover that it's really snake oil.

Mr. MOYNIHAN. Mr. President, I thank the Chair for its patience and indulgence, allowing me this extended time in morning business.

The time for morning business having expired, I suggest the absence of a quorum, if that is the wish of the Chair.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TOWER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXPORT TRADING COMPANY ACT OF 1982

Mr. TOWER. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 734.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendments to the bill (S. 734) entitled "An Act to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Zablocki, Mr. Bingham, Mr. Eckart, Mr. Bonker, Mr. Wolpe, Mr. Shamansky, Mr. Broomfield, Mr. Lagomarsino, Mr. Erdahl, Mr. Gilman, and Mrs. Fenwick (for title I of the House amendment and modifications committed to conference), Mr. St Germain, Mr. Annunzio, Mr. Minish, Mr. LaFalce, Mr. Barnard, Mr. Stanton of Ohio, Mr. Wylie, Mr. McKinney, and Mr. Leach of Iowa (for title II of the House amendment and modifications committed to conference), Mr. Rodino, Mr. Seiberling, Mr. Hughes, Mr. McClory, and Mr. Butler (for title III of the House amendment and modifications committed to conference) be the managers of the conference on the part of the House.

Mr. TOWER. Mr. President, I move that the Senate agree to the conference requested by the House of Representatives and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. Nickles) appointed Mr. Garn, Mr. Heinz, Mr. Armstrong, Mr. Chafee, Mr. Danforth, Mr. Riegle, Mr. Proxmire, Mr. Dodd, and Mr. Dixon conferees on the part of the Senate.

MESSAGE FROM THE HOUSE

At 9:36 a.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 6068) to authorize appropriations for fiscal year 1983 for intelligence and intelligence-related activities of the U.S. Government, for the intelligence community staff, for the Central Intelligence Agency retirement and disability system, to authorize supplemental appropriations for fiscal year 1982 for the intelligence and intelligence-related activities of the U.S. Government, and for other purposes; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. Boland, Mr. Zablocki, Mr. Mineta, Mr. Stump, Mr. Rose, Mr. Gore, Mr. Robinson, Mr. Whitehurst, and Mr. Young of Florida, and for matters falling within the jurisdiction of the Committee on Armed Services: Mr. Price, Mr. Stratton, and Mr. Dickinson as managers of the conference on the part of the House.

The message also announced that the House has passed the bill (S. 734) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally; with amendments, it insists on its amendments, asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. Zablocki, Mr. Bingham, Mr. Eckart, Mr. Bonker, Mr. Wolpe, Mr. Shamansky, Mr. Broomfield, Mr. Lagomarsino, Mr. Erdahl, Mr. Gilman, and Mrs. Fenwick (for title I of the House amendment and modifications committed to conference), Mr. St Germain, Mr. Annunzio, Mr. Minish, Mr. LaFalce, Mr. Barnard, Mr. Stanton, of Ohio, Mr. Wylie, Mr. McKinney, and Mr. Leach, of Iowa (for title II of the House amendment and modifications committed to conference), Mr. Rodino, Mr. Seiberling, Mr. Hughes, Mr. McClory, and Mr. Butler, (for title III of the House amendment and modifications committed to conference) as managers of the conference on the part of the House.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 6782. An act to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans, to increase the rates of dependency and indemnity compensation for surviving spouses and children of veterans, and for other purposes.

At 10:05 a.m., a message from the House of Representatives, delivered by Mr. Gregory, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2332) to amend the Energy Policy and Conservation Act to extend certain authorities relating to the international energy program, to provide for the Nation's energy emergency preparedness, and for other purposes.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

At 11:30 a.m., a message from the House of Representatives, delivered by Mr. Gregory, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 5380. An act to recognize the organization known as American Ex-Prisoners of War; and

H.J. Res. 525. Joint resolution authorizing and requesting the President to issue a proclamation designating the week of August 1, 1982 through August 7, 1982 as "National Purple Heart Week."

The enrolled bill and joint resolution were subsequently signed by the Vice President.

HOUSE BILL HELD AT DESK

Under the authority of the order of July 27, 1982, the following bill was ordered held at the desk pending further disposition:

H.R. 6782. An act to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans, to increase the rates of dependency and indemnity compensation for surviving spouses and children of veterans, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-1030. A resolution adopted by the Upper Hudson Nuclear Weapons Freeze Campaign urging Congress not to approve any appropriations for new or additional nuclear weapons systems; to the Committee on Appropriations.

POM-1091. A resolution adopted by the Hernando County, Fla., Board of County Commissioners, urging Congress to take all steps necessary to prevent the awarding of contracts for the production of tactical military equipment to firms situated in foreign countries; to the Committee on Armed Services.

POM-1092. A resolution adopted by the House of Representatives of the Commonwealth of Massachusetts; to the Committee on Environment and Public Works:

"Resolution

"Whereas, the city square segment of the Central Artery-North area project is of crucial importance to the Charlestown section of the city of Boston; and

"Whereas, the present city square plan would provide substantial benefits to Charlestown, including a vastly improved street system, elimination of hazardous visual barriers, increased private investment and an enlarged tax base; and

"Whereas, the Federal Highway Administration, through its division administrator, has decided not to fund the city square segment of the project after the expenditure of large sums of taxpayer's money spent for traffic studies, environmental impact statements, preliminary engineering, the storrow drive connector study and the expenditure of enormous amounts of time and energy, particularly by the North Area Task Force, composed of a group of Charlestown citizens encouraged by the Federal Highway Administration to participate in the project; and

"Whereas, the decision by the division administrator represents a complete reversal of understandings reached during the five years of project planning; and

"Whereas, the city square segment is an integral and necessary part of the Central

cause we had an agreement with our NATO allies. Was this lobbying? Boy, if there ever was lobbying, I suppose that is if it in fact happened.

I have had CETA people on a payroll for the Federal Government come up and lobby me to continue that program, and other Federal employees—postal employees. Is that lobbying, is that prohibited? I think so, under this provision cited.

So I think it is good to focus on the problem, see what can be done in a reasonable, practical way—not to isolate ourselves from sources of influence. Lobbyists perform a very vital and very necessary and very helpful function to us in the Congress. It is an adversary relationship they have with their competitors. When something is going wrong with a program they are interested in awarded to their competition, they come whistling in, and say, "They fouled up, let me tell you the truth."

You look into it and find sometimes it is so, sometimes it is not so. But there is nothing intrinsically bad with lobbying. We can make it sound bad. But there is nothing bad. It is helpful to us. It is a tool or an instrument that we use in coming to our conclusions as Members. It points up shortcomings and deficiencies which we might not otherwise know.

So I compliment the gentleman, all of the gentlemen who brought this to our attention by resolution. I think good will come of it for the Government, for the Congress, for the taxpayer. I know that any work that the Committee on Investigations does will be done in a thorough and workmanlike manner. I can assure the gentleman they will proceed with dispatch and do as good a job as possible.

Mr. DICKS. Mr. Speaker, will the gentleman yield?

Mr. DICKINSON. I yield to the gentleman from Washington.

Mr. DICKS. I thank the gentleman for yielding.

The gentleman as usual has presented a very commonsense, straightforward, candid assessment of the situation. I appreciate his assurances—as the ranking member, and a very outstanding Member of this body—about his interest and concern in seeing this situation clarified.

Again, I just would emphasize that I think sometimes these things happen, and I think this gives us an opportunity to clarify the law so that everyone knows where they stand. I think it will produce something that is positive. We have an old statute that probably is out of date, we ought to clarify it, and I hope that that is what will come from this, something constructive and positive, not something that is negative.

I appreciate the gentleman's assurances. I appreciate the fact that the committee is willing to deal with this issue in a forthright and candid way.

Mr. DICKINSON. I thank the gentleman.

Mr. WHITE. Mr. Speaker, I have no further requests for time.

MOTION OFFERED BY MR. WHITE

Mr. WHITE. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. WHITE moves to table House Resolution 512.

The SPEAKER pro tempore. The question is on the motion to table offered by the gentleman from Texas (Mr. WHITE).

The motion to table was agreed to.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Wednesday, August 4, 1982.

FOREIGN TRADE ANTITRUST IMPROVEMENTS ACT OF 1982

Mr. RODINO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5235) to amend the Sherman Act, the Clayton Act, and the Federal Trade Commission Act to exclude from the application of such acts certain conduct involving exports, as amended.

The Clerk read as follows:

H.R. 5235

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Trade Antitrust Improvements Act of 1982".

AMENDMENT TO SHERMAN ACT

SEC. 2. The Sherman Act (15 U.S.C. 1 et seq.) is amended by inserting after section 6 the following new section:

"SEC. 7. This Act shall not apply to conduct involving trade or commerce (other than import trade or import commerce), with foreign nations unless—

"(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

"(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

"(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

"(2) such effect gives rise to a claim under the provisions of this Act, other than this section.

If this Act applies to such conduct only because of the operation of paragraph (1)(B), then this Act shall apply to such conduct only for injury to export business in the United States.".

AMENDMENT TO CLAYTON ACT

SEC. 3. Section 7 of the Clayton Act (15 U.S.C. 18) is amended by adding at the end thereof the following undesignated paragraph:

"This section shall not apply to the formation or operation of any joint venture limited to commerce, other than import commerce, with foreign nations.".

AMENDMENT TO FEDERAL TRADE COMMISSION ACT

SEC. 4. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end thereof the following new paragraph:

"(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) Unless—

"(A) such methods of competition have a direct, substantial, and reasonably forseeable effect—

"(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

"(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

"(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.".

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLORY. Mr. Speaker, I demanded a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. RODINO) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. McCLORY) will be recognized for 20 minutes.

The Chair recognizes the gentleman form New Jersey (Mr. RODINO).

Mr. RODINO. Mr. Speaker, I yield myself such time as I may consume.

(Mr. RODINO asked and was given permission to revise and extend his remarks.)

Mr. RODINO. Mr. Speaker, I am very pleased that the House is considering H.R. 5235, the Foreign Trade Antitrust Improvements Act. The distinguished ranking minority member of our committee, the gentleman from Illinois (Mr. McCLORY) joined me in introducing this legislation in March of last year.

Incidentally, I might suggest to the ranking minority member who is retiring from this Congress following the expiration of this Congress, that if he would like we can amend this bill, which has been known as the Rodino-McClory bill, so it is known as the McClory-Rodino bill. I would be very happy to do this in view of the fact that the gentleman has really devoted a great deal of attention and has made a fine contribution in assuring that this legislation would come to the

floor, and receive the unanimous support of the subcommittee.

Mr. Speaker, I am very pleased that the House is considering H.R. 5235, the Foreign Trade Antitrust Improvements Act.

The distinguished ranking minority member of our committee, Mr. McCLORY, joined me in introducing this legislation in March of last year. The bill has a simple and straightforward purpose: to clarify application of our antitrust laws to the foreign commerce of the United States. By spelling out clearly when our antitrust laws do or do not apply, we can help American exporters, particularly those small- and medium-sized firms that wish to join together to achieve efficiencies in their export efforts.

Since March of last year, this legislation has proceeded at a moderate pace through hearings and markup. The committee has considered carefully the impact of amendments to our antitrust laws. Such changes should not be undertaken lightly.

Here the change primarily codifies the existing enforcement practices of the Department of Justice and the Federal Trade Commission. The change should have no effect on the existing enforcement policies of these two agencies; but it will have a significant beneficial effect in two areas. First, we hope that the bill will help erase the perception held in many business circles that the antitrust laws hinder efficiency-enhancing joint export activity. A clear message will emanate from the Congress that we do not wish our laws to hamper such legitimate export activity. Second, the clarification in application of the antitrust laws will iron out wrinkles in the jurisdictional fabric that have led to legitimate doubts among exporters about what conduct is or is not permitted. Some of the decisions of our courts in private antitrust suits have left doubt about the precise international reach of U.S. antitrust laws and policy.

For the Sherman Act and section 5 of the FTC Act, the key language to be added by this bill is a requirement that conduct, if it is to be the basis of antitrust suit, have a direct, substantial, and reasonably foreseeable effect on the domestic or import commerce of the United States. If the sole effect is on the export commerce of the United States, only those U.S. firms that have lost export opportunities may recover under the antitrust laws.

H.R. 5235 will also remove the incipiency standard in section 7 of the Clayton Act for joint ventures limited to foreign commerce other than import commerce. Here, again, the committee's change clarifies what we understand has been the enforcement policy of our antitrust agencies. But, after this clarification, joint export endeavors by American firms could be undertaken with greater certainty as to the outcome of private as well as Government suits.

Neither of these changes affect the substantive standards that a court applies in determining whether the antitrust laws have been violated. Instead, H.R. 5235 draws a more precise jurisdictional line indicating the point at which U.S. antitrust laws simply do not apply.

I wish that we could accomplish in other areas what I believe H.R. 5235 will do for the antitrust laws. Anytime we can legislate greater clarity into the law, everyone benefits. In this case, the beneficiaries will be anyone who must interpret the antitrust laws, including businessmen, antitrust counsel, Government enforcement officials, and the judges, who are the final arbiters in interpreting the laws. It is also worthwhile for us to reflect on the impact of this bill on the export trading company legislation that the House enacted last week. That legislation allows an exporter to apply to the Attorney General for certification that his joint export conduct is not likely to result in a violation of the antitrust laws. The bill before us today does not require certification. There is no cost to the Government or to businessmen in affording the greater certainty. And the certainty benefits everyone, whether or not the conduct has been certified by the Attorney General.

But H.R. 5235 is no way inconsistent with the export trading company legislation. Indeed, it should make the certification process in the other legislation more meaningful. If the Department of Justice has a clear and straightforward statement of the law before it, it will be easier to determine if conduct meets the standard for certification.

The bill we are acting on today also does not undermine the protections in our antitrust laws for consumers and competitors. It retains full protection for any person injured by conduct that has a direct, substantial, and reasonably foreseeable anticompetitive effect on the domestic or import commerce of the United States. Even export conduct, if it is undertaken by a powerful association of exporters in a manner that causes worldwide shortages or artificially unflated prices, can have the requisite effects here in the United States to trigger application of our antitrust laws. And firms here in the United States that are injured through loss of an export opportunity continue to enjoy the full protection of the antitrust laws to the extent they are victims of anticompetitive conduct.

The careful and balanced clarification represented in this bill has drawn support from groups as diverse as the Business Roundtable, the Antitrust Section of the American Bar Association, and academic experts in our antitrust laws. This wide consensus is also reflected in the bill's sponsorship by every member of the Subcommittee on Monopolies and Commercial Law. I want to thank each and everyone of them, and in particular the distinguished ranking minority member, for their support and assistance.

Mr. Speaker, I urge my colleagues to join me in supporting this legislation.

□ 1345

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, first of all, I want to commend the chairman of the committee and express my appreciation for his generous remarks. Indeed, I would be very proud if the measure became known at some stage as the Rodino-McClory bill.

As coauthor and cosponsor of this legislation with the distinguished chairman of the Judiciary Committee, I am pleased to see H.R. 5235 before the House today. Last week the House passed H.R. 1799, which, like H.R. 5235, is designed to assist in the promotion of our export trade. But there are some important differences. While H.R. 1799 establishes a procedure for antitrust certification, H.R. 5235 actually amends the antitrust laws themselves. While H.R. 1799's procedure is optional at the discretion of the exporter, H.R. 5235 applies to all exporters as a *matter of* law. While H.R. 1799 provides its benefits after completion of an administrative process, H.R. 5235 provides its benefits immediately upon enactment. While H.R. 1799 may require additional expenditures by exporters in applying for certification and by the Government in reviewing the application, H.R. 5235 should save money by clarifying and simplifying the law for exporters, for law enforcers, and for judges. And while H.R. 1799 applies only to export trade, H.R. 5235 applies both to export trade and to purely foreign trade. Neither bill applies to our import trade.

But these bills are not in competition with one another. Rather they complement each other. For ultimately the question of certification under H.R. 1799 will hinge in large measure on the standard we enact today in H.R. 5235.

Our antitrust laws apply not only to domestic trade or commerce but to our export trade, our import trade, and in some instances to purely foreign trade. If two Japanese businessmen conspire to restrain trade in California, our antitrust laws apply. And it has been suggested by some that even where purely foreign activity has an entirely foreign impact, the antitrust laws may apply if U.S. persons are involved.

H.R. 5235 is designed to settle some of these international antitrust issues. It thus does not address our domestic trade nor, for that matter, our import trade since imports invariably have an impact on our domestic trade. Moreover, it was our judgment that imports were doing rather well, perhaps too

well, and did not need the assistance of this legislation.

Therefore, H.R. 5235 states that our antitrust laws shall not apply to our export trade or to purely foreign trade unless the conduct has a "direct, substantial, and reasonably foreseeable" anticompetitive effect on our domestic commerce or the commerce of exporters in the United States. That is the new standard, plain and simple. When I refer to an anticompetitive effect, I, of course, refer to those effects that the antitrust laws are written to protect against.

H.R. 5235 would place the new standard I described both in the Sherman Act and in the Federal Trade Commission Act in order to make perfectly clear what we mean.

It is important to note that H.R. 5235 circumscribes the antitrust laws. In graphic terms, it draws a circle around the antitrust laws and states that nothing outside the circle is covered. But there is no implication whatsoever that everything inside the circle is covered. We are establishing a rule for noncoverage, not a rule for coverage. It is, in a sense, a tool for defendants but not for plaintiffs. Again, there is no intention to make the converse of H.R. 5235 a legal maxim. It is not necessarily true that every anticompetitive domestic effect resulting from exports or foreign commerce will be actionable as a matter of law.

For example, on occasion courts invoke notions of comity and the like in handling sensitive international questions arising under the antitrust laws. H.R. 5235 in no way affects the authority of a court to consider such matters in cases where there is an anticompetitive domestic effect arising from exports or foreign trade. This should illustrate that conduct falling within the circle may not necessarily give rise to a cause of action for which relief may be granted.

Another point which might be misunderstood regarding the standard of H.R. 5235 is the nature of the effect. Clearly, our exports create jobs and increase profits in the United States and thus have a beneficial impact on our economy. But this effect does not satisfy the standard of H.R. 5235. On the other hand, exporting goods from the United States decreases supplies at home which might lead to an increase in prices for consumers. While this effect may be termed adverse, it still does not satisfy the standard. For what is needed is an effect in the United States, either in its domestic or its export commerce, which gives rise to a claim under the antitrust laws, as known today or as hereafter amended. Thus a beneficial effect or an adverse effect is, as such, insufficient. It must be an antitrust effect.

Moreover, it should be obvious that conduct which has a "direct, substantial and reasonably foreseeable" effect on our domestic commerce or export trade does not, in itself, give rise to liability. Even where the effect gives rise to a claim under the antitrust laws, as required under H.R. 5235, this is only the beginning. The plaintiff must still establish standing, injury, causality, violation, damages, and so forth. H.R. 5235 poses an additional threshold issue. If the defendant wins the issue, the case should be dismissed. If the plaintiff wins, the plaintiff must still prove its case just as is required today.

It should also be noted that effects on the domestic commerce are treated differently from effects on our export commerce. In both cases, our commerce is fully protected. But if the requisite effect is on domestic commerce, there is no limitation in H.R. 5235 on who may recover. Under current law, foreign nationals located abroad may in certain circumstances recover under our antitrust laws. H.R. 5235 does not change that. But if the requisite effect is felt only with respect to our export commerce, then H.R. 5235 does limit who may recover to persons engaged in export trade or commerce "in the United States." In such an instance foreign nationals would be eligible to recover only to the extent they engaged in U.S. export trade in the United States. This distinction reflects our high sensitivity to anticompetitive domestic effects and our appropriately diminished sensitivity to export transactions which are, of course, international transactions. In the latter instance our interest is limited to exporters in the United States and no one else. H.R. 5235 reflects this distinction.

Finally, in addition to amending the Sherman Act and the FTC Act, H.R. 5235 amends the Clayton Act. While the former amendments are arguably only clarifying in their effect, the Clayton Act amendment is clearly an exemption, although a limited one. It exempts from section 7 of the Clayton Act the formation and operation of joint ventures limited to trade or commerce with foreign nations except for import trade or commerce. Such joint ventures will not have to worry about whether they may tend to lessen competition. But if they do, in fact, lessen competition in the United States, the Sherman Act prohibitions are still applicable.

It is my hope that by according some leeway to joint ventures, we might encourage the formation of export trading companies, which will facilitate exports by small- and medium-sized businesses. These are the firms that have the untapped potential to boost our exports and thus improve our balance of trade.

Mr. Speaker, this legislation is important to our multifaceted program to improve our export trade. It is also a significant improvement in our antitrust laws. I urge its adoption.

Mr. RODINO. Mr. Speaker, I yield such time as he may consume to the distinguished chairman of the Committee on Foreign Affairs, the gentleman from Wisconsin (Mr. ZABLOCKI), who is one of the initial sponsors of this legislation and who so ably led the fight to adopt the export trading legislation that this House considered a week or so ago.

(Mr. ZABLOCKI asked and was given permission to revise and extend his remarks.)

Mr. ZABLOCKI. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of House Resolution 5235 and wish to associate myself with the statement and the remarks of Chairman RODINO.

At the outset, I would like to commend the chairman of the Judiciary Committee, Mr. RODINO, and his ranking minority member, Mr. MCCLORY, for adopting what I consider to be a straightforward approach to the problem of insuring that the antitrust laws of this country do not interfere with or discourage U.S. firms from exporting their products. This bill goes to the heart of the matter—by simply amending the antitrust laws—and thereby makes it clear to all concerned that U.S. companies are permitted to collaborate in order to sell their goods overseas.

I congratulate the gentleman for what is a simple but effective approach and urge the House to pass the measure.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. ZABLOCKI. If I have time, I am delighted to yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank my chairman. I would like to applaud the chairman of the Judiciary Committee and our ranking member, the gentleman from Illinois (Mr. MCCLORY) for the initiative they have taken and also our chairman for what he has done for this is our own committee.

In my own district I have two small businesses which have gotten awards from the President because of their export trade and it is good to see the encouragement that this will give to small business which is so important. Too few of our small businesses have been encouraged to go into foreign trade. This chance to form trading companies without danger of antitrust action is very important to them. I thank the chairman.

□ 1400

Mr. ZABLOCKI. I thank the gentleman for joining me in commending the chairman and ranking member of the Committee on the Judiciary.

Mr. RODINO. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington (Mr. BONKER), who is also an original sponsor of H.R. 1799 which this House adopted a week or so ago.

Mr. BONKER. I thank the distinguished chairman, and want to join those in commending him and his committee for excellent work in behalf of this legislation, and to bring it to the House floor.

Mr. Speaker, I do have a few question, since I am not thoroughly familiar with many of the provisions in the bill.

First I would like to ask the chairman how the provisions of H.R. 5235 relate to the provisions of H.R. 1799 which the chairman knows have been incorporated, essentially from his committee draft in H.R. 1799 which was adopted by the House. Specifically how do those provisions concern the certification procedure.

It seems to me there are two steps involved in the drafting of these bills. First, is to clearly exempt exports from possible antitrust suits or violations; and second, to remove the problem of uncertainty by providing for the certification procedure which would give the companies who so form an ETC clear immunity from antitrust laws.

Mr. RODINO. Mr Speaker, if the gentleman will yield, I want to say to the gentleman from Washington that, first of all, H.R. 5235 is in no way inconsistent. As a matter of fact, I think it not only complements but it makes more certain what is desired in the certification.

The Attorney General will have before him the clear and precise statement of H.R. 5235.

So I think it actually makes more meaningful the certification that will be issued by the Attorney General.

Mr. BONKER. So it does not impede the certification procedure; it actually strengthens that procedure?

Mr. RODINO. That is correct.

Mr. BONKER. I also would like to ask the distinguished chairman whether this bill, once it is reported out and passed by the House, will be referred to the conference with the Senate along with the other bills that have previously been adopted by the full House?

Mr. RODINO. Mr. Speaker, it is my understanding that the Senate Judiciary Committee might act on it, but that will depend on the Senate Judiciary Committee.

Mr. BONKER. Again I would like to commend the chairman.

Mr. Speaker, I feel that his efforts to simplify the procedure, which might appear rather cumbersome in the Senate bill, certainly lead us in the right direction. I look forward to working closely with the chairman in the upcoming conference so we can have an ETC bill signed into law some time before the August break.

Mr. RODINO. Again I want to thank the gentleman for his cooperation in this effort.

Mr. Speaker, I have no further requests for time.

Mr. McCLORY. Mr. Speaker, I do have a further request for time, but before yielding further time I would like to merely reiterate that in my view this measure that we are discussing today is complementary to the other measure that we passed last week.

I do not think you can add to or qualify the antitrust laws through any process of certification; nor do I think you can abridge the laws that are on the books, nor do I think you can circumvent them or nullify them in any way. Nor do I think you should through any process of certification. Instead, one should proceed first to clarify underlying substantive law and then put a certification process in place.

So this measure, it seems to me, is essential in order to allay the fears and apprehensions, for the most part, which are mistakenly held by many who consider entering the export business.

The testimony before our committee indicated that most of the apprehensions and fears of the application of the antitrust laws were not well founded.

We are trying in H.R. 5235 to, set forth clearly and deliberately that we want to encourage exports by granting an exemption from the antitrust laws for those activities whose effects are felt exclusively abroad. Unless such conduct has a direct, substantial, and reasonably foreseeable effect on domestic competition, domestic trade, then the exemption would be virtually complete.

So I think it should go a long way toward aiding th business community in its perception of the antitrust aspects of export trade and foreign trade.

Mr. Speaker, I yield such time as he may consume to the gentleman from Washington (Mr. BONKER).

Mr. BONKER. I thank the gentleman for yielding.

Mr. Speaker, I appreciate the gentleman's comments in support of Chairman RODINO and his efforts to clearly exempt exports from possible antitrust violations.

I still receive recurring comments or questions about how far this legislation would go to clearly exempt those who engage in this activity from possible suits, either criminal or civil, treble damagers and the like, and whether this legislation addresses this issue clearly in the sense that businesses who form a trading company will not continue to be in a state of uncertainty as to what possible damages might be brought against them at some future time.

Mr. McCLORY. It does answer that. It answers that directly, and it seems to me as completely as is possible for any legislative measure to do.

Of course, we are not denying to the courts of the land the right to interpret the laws we pass, but in as straightforward language as is possible we are undertaking to limit the application of our antitrust laws to conduct which has an anticompetitive domestic effect as I have previously explained.

Mr. Speaker, I yield 3 minutes to the gentleman from Minnesota (Mr. FRENZEL).

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Speaker, I am delighted that the committee has given us this bill today. I hope that the House promptly passes it.

I believe that the gentleman from Illinois, the distinguished gentleman from Illinois whose name has now been given precedence on the bill by its original author, has done a good job of explaining it. I think his response to the query of the gentleman from Wisconsin certainly conforms to my understanding.

What this bill is going to do is to relieve uncertainties which the gentleman from Illinois suggested were not well founded, and I agree with that statement. But nevertheless, the uncertainties were there. This bill will cure those uncertainties. The committee has done a good job in getting at the problem.

My only reluctance is that we have only attacked two-thirds of the problem. The committee report on page 10, which corroborates the statement of the gentleman from Illinois on the floor, indicates, and I quote:

> It is thus clear that wholly foreign transactions as well as export transactions are covered by the amendment but that import transactions are not.

I understand why the committee restricted imports and eliminated them from the bill. Nevertheless, it is true that in the conduct of foreign trade it is hard to export without importing at the same time. To continue the extraterritorial application of antitrust laws to imports, I think, is going to impede some exports that this country needs badly.

I do not want to criticize the work of the committee because I realize that it heard contradictory testimony. Nevertheless, I think in the future we are going to want to extend the exemption to the import side simply because of a desire to increase exports. We are going to find that companies, coalitions and combinations are indulging in both imports and exports and need antitrust exemptions at both ends of the game.

Nevertheless, having done two-thirds of the job extraordinarily well, and following a good job of yesterday on the trading company antitrust relief, the committee deserves nothing but commmendation today.

I hope this bill is promptly passed.

Mr. McCLORY. I thank the gentleman.

Mr. Speaker, I thank the gentleman for his statement. I have noted his reservations on the subject of imports.

I might say that I would be interested in going in the other direction with regard to the subject of imports. I would favor legislation which would deny to foreign concerns some advantages that they now have in our import market, which I think adversely affects our domestic concerns.

But that I believe is truly a different matter.

The legislation that we are acting upon here today is complementary to the other measure that we passed, H.R. 1799, which is I believe referred to as the Export Trading Company Act. We have done our best, it seems to me, here today to provide those assurances which are so important to large and small exporters who are apprehensive about the application of our antitrust laws.

Mr. Speaker, I yield back the balance of my time.

Mr. RODINO. Mr. Speaker, I really want to make something clear here—and I think the gentleman from Illinois, the ranking minority Member, will agree with me—this is not an exemption from the antitrust laws. What we have done is to establish clearly what might be a violation so that there is no apprehension on the part of the business community as to possible violation of antitrust laws.

We have established a clear line of definition between what is lawful and what is unlawful, and it is a very helpful clarification. I believe that this is the reason for this amendment.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding.

Mr. Speaker, perhaps instead of the word "exemption" I should have used the expression "a limitation on the application of the antitrust laws" with respect to these export and foreign trade activities.

So to the extent that there is some semantics involved, I want to be perfectly clear and I want to be perfectly fair. I do not want to either exaggerate or diminish the importance of this measure insofar as export and foreign trade activities are concerned. While we are granting an exemption from the Clayton Act, it is not a major one. Our basic purpose is to clarify the reach of the Sherman Act and the FTC Act.

Mr. RODINO. Mr. Speaker, I certainly go along with that understanding.

• Mr. DERWINSKI. Mr. Speaker, as a supporter of legislation approved by the House last week to promote and encourage U.S. exports, I also favor H.R. 5235, to exclude from certain antitrust provisions foreign commerce—except import activities—and joint business ventures involved therein which does not have any substantial domestic impact.

This bill should remove the inhibition many American business firms have regarding joint ventures which might cause them to be liable to antitrust action. They could be more competitive with foreign firms and help reduce the U.S. trade deficit.•

Mr. RODINO. Mr. Speaker, I have no further requests for time.

GENERAL LEAVE

Mr. RODINO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. RODINO) that the House suspend the rules and pass the bill, H.R. 5235, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to amend the Sherman Act, the Clayton Act, and the Federal Trade Commission Act to exclude from the application of such Acts certain conduct involving trade with foreign nations."

A motion to reconsider was laid on the table.

RECONCILIATION SAVINGS

Mr. FORD of Michigan. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6862) to reduce budget authority and outlays under certain civil service programs pursuant to the first concurrent resolution on the budget—fiscal year 1983.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. FORD).

The motion was agreed to.

The SPEAKER pro tempore. The Chair designates the gentleman from California (Mr. FAZIO) as Chairman of the Committee of the Whole and requests the gentleman from California (Mr. MINETA) to assume the chair temporarily.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 6862, with Mr. MINETA, Chairman pro tempore in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Michigan (Mr. FORD) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. DERWINSKI) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan (Mr. FORD).

Mr. FORD of Michigan. Mr. Chairman, I yield myself such time as I may consume.

(Mr. FORD of Michigan asked and was given permission to revise and extend his remarks.)

Mr. FORD of Michigan. Mr. Chairman, I rise in support of H.R. 6862, a bill to reduce budget authority and outlays under the civil service retirement program pursuant to the reconciliation instructions in the first budget resolution.

This bill, reported by the House Committee on Post Office and Civil Service, has generated some controversy because it does not meet the reconciliation target, and more importantly, it does not cap cost-of-living adjustments for retired Federal workers and military pensioners.

□ 1415

Let me assure my colleagues that this is not an oversight on the part of the committee. My committee acted out of conviction that its refusal to cap the cost-of-living adjustments due to retirees and their survivors accurately reflects the position of the House taken earlier in this session on that issue. I am confident that a majority of my colleagues share my feeling that in our haste to economize we have drained enough blood from the active and retired Federal workers, and every time we decide to tighten our budget belt we continue to turn to the same people to be the frontline troops who will make the first sacrifice.

Last year, when we were asked to make deep budget cuts to finance the historic tax bonanza for the rich and increase defense spending at an astronomical pace, at the same time we turned, through the enactment of Gramm-Latta, without hesitation to retired Federal workers. We took away their twice-a-year cost-of-living adjustments last year, which I might remind the Members parenthetically, only very recently came into play when we took away the 1 percent add-on that previously had been in the law. Indeed in the last few years we have cut back the level of retiree and survivors' benefits several times.

It did not trouble the budget cutters last year, however, that what we are really doing when we do this is breaking a contract. It is a contract that is made with people when they enter upon service with the Federal Government, whether they wear a military uniform or civilian clothing. They perform their term of service with Government, and traditionally they have recognized that Government salaries for most positions are not comparable to the pay that would be received for the same skills in the private sector. But, they have been promised that if they pursue their duties diligently, perform them for the required number of years, that we will agree to provide them in their years of retirement a decent retirement annuity.

It is disturbing to me that we find ourselves in the position where the

attempt to deal with a difficult situation. Quite simply, it permits landowners to join the system even though they may not technically qualify. This provision is not designed to serve as a vehicle to stop an otherwise eligible Federal project through the purposeful inclusion of an area not specifically included by the Congress within the Coastal Barrier Resources System.

Section 5. Limitations on Federal Expenditures Affecting The System

Section 5 specifies the limitations on new Federal financial expenditures or assistance. The Conferees agreed to provisions appearing in both the Senate bill and the House amendment and modified a provision of the House amendment concerning stabilization and erosion control projects in Louisiana. As modified, section 5(a)(3) provides a limited exception to the prohibition of expenditures for stabilization projects. Expenditures for such projects are permissible within the units designated pursuant to Section 4 on maps numbered SO1 through SO8 if such projects are for purposes other than encouraging development and, within all units, in cases where an emergency threatens life, land, and property immediately adjacent to the unit in question.

The limitations contained in Section 5 apply to areas within the Coastal Barrier Resources System as well as certain other facilities that may extend into a System unit, such as a bridge or a causeway. There need not be a showing that the expenditure would stimulate development. Except as provided in the Section 5(a)(3) exception, the fact that a particular project may be designed to benefit a non-coastal barrier is not *significant*.

Section 6. Exceptions

Section 6 of the Conference report outlines the specific exceptions to the general prohibition on new Federal expenditures or financial assistance.

Under Section 6(a) of the Senate bill the appropriate Federal officer would be authorized to make those specific Federal expenditures after providing written notification to the Secretary. The Conferees agreed to accept the House provision which requires the appropriate Federal officer to consult with the Secretary before making any Federal expenditures or financial assistance available under the provisions of Section 6.

Section 6(a)(1) provides an exception for energy projects in or adjacent to coastal areas. Both the Senate bill and the House amendment contained similar provisions and the Conferees agreed to adopt the House language. Federal assistance or expenditures may be made available for "any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body."

Section 6(a)(3) of the Conference report contains a provision included in the House amendment which provides an exception for the maintenance, replacement, reconstruction, or repair of publicly owned or publicly operated roads, structures or facilities that are essential links in a larger network or system.

Section 6(a)(4) exempts military activities essential to national security from the general prohibition of Federal expenditures or financial assistance under Section 5. The Conferees agreed that the determination as to whether military activities are essential to national security must be made in accordance with existing law and procedure.

The Conference report adopts the exception for Coast Guard facilities which was included in the House amendment and requested by the Coast Guard. Section 6(a)(5) allows expenditures or financial assistance for the construction, maintenance, operation and rehabilitation of Coast Guard facilities.

The Senate bill contained an exemption for certain programs and projects for fish and wildlife conservation so long as such projects were consistent with the purposes of the Act. The House amendment contained a similar provision but such projects did not have to be consistent with the purposes of the Act. The Conferees agreed to accept the House language. However, under the language in Section 6(a)(7)(A), such projects must be consistent with the purposes of the Act.

The House amendment contained an exception for projects under the Coastal Zone Management Act—a provision not included in the Senate bill. The Conferees agree to adopt the House provision which is incorporated in Section 6(a)(6)(C) of the Conference report.

The House amendment provided an exception for assistance for emergency actions essential to the saving of lives and the public health and safety. The Senate bill contained a similar provision but limited the exception to those actions necessary to alleviate the immediate emergency. The Conference report adopts a modified provision in Section 6(a)(6)(E) which permits assistance for emergency actions if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 and section 1362 of the National Flood Insurance Act of 1968 and are limited to actions that are necessary to alleviate the emergency. Section 305 of the Disaster Relief Act authorizes the President, in a declared emergency, to provide any or all of the assistance available under the Act as the President deems appropriate.

Section 7. Certification of Compliance

Section 7 adopts provisions appearing in both the Senate bill and the House amendment.

Section 8. Priority of Laws

Section 8 of the Conference report adopts a provision of the Senate bill. This section assures that this Act will not interfere with the current delicate balance between other Federal laws operating with regard to coastal barrier areas and State and local laws. Additionally, this section protects local interests by providing that this Act is not intended to preempt State or local laws unless there is a direct conflict.

Section 9. Separability

Section 9 of the Conference report adopts a provision of the Senate bill not contained in the House amendment. This section is a standard separability provision. It provides that each provision and application of this law will be judged on its own merits.

Section 10. Reports to Congress

This section adopts a provision that appeared in both the Senate bill and the House amendment. The Conferees agreed to adopt the Senate language and to add a requirement that the Secretary's report include an anlysis of the effect, if any, that general revenue sharing grants have had on undeveloped coastal barriers.

The Secretary's report will also include recommendations for additions to or deletions from the Coastal Barrier Resources System. While the conferees do not intend that areas developed after the date of the Act should be recommended for deletion for development reasons, they recommend that in a few areas further study may reveal possible errors. In particular, the conferees are aware that there is a dispute regarding the geological composition of Coconut Point, Florida. There is also a dispute regarding the development status of approximately 114 acres of the Wilfurt Woods property on the west end of the Island of Sanibel, Florida. These 114 acres are part of a planned unit development which has been approved in a settlement agreement between the owners of the property and the Sanibel-Captiva Conservation Foundation. Finally, there is a question regarding the conservation status of an area included in the Casey Key, Florida, map. The conferees intend that the Department of the Interior study these areas and report to the appropriate committees as soon as practicable to insure that any errors may be addressed legislatively. The Conferees intend that any reports transmitted by the Secretary under this section, as well as any maps and notifications of boundary modifications under Section 4, shall also be submitted to the Committee on Public Works and Transportation of the House of Representatives.

Section 11. Amendment Regarding Flood Insurance

Section 11(a) adopts the House language amending Section 1321 of the National Flood Insurance Act of 1968. Section 11(b) adopts the Senate language amending Section 341(d)(2) of the Omnibus Budget and Reconciliation Act of 1981.

From the Committee on Merchant Marine and Fisheries:

WALTER B. JONES,
JOHN B. BREAUX,
GERRY E. STUDDS,
WILLIAM J. HUGHES,
GENE SNYDER,
EDWIN B. FORSYTHE,
THOMAS B. EVANS, Jr.,

From the Committee on Public Works and Transportation:

ROBERT A. ROE,
BOB EDGAR,
JOHN G. FARY,
DON H. CLAUSEN,
JOHN PAUL HAMMERSCHMIDT.

Managers on the Part of the House.

ROBERT T. STAFFORD,
JOHN H. CHAFEE,
SLADE GORTON,
JENNINGS RANDOLPH.
DANIEL P. MOYNIHAN.

Managers on the Part of the Senate.

MAKING IN ORDER AT ANY TIME HEREAFTER CONSIDERATION OF CONFERENCE REPORT ON S. 1018, COASTAL BARRIER RESOURCES ACT

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent that it may be in order at any time hereafter to consider the conference report on the Senate bill (S. 1018) to protect and conserve fish and wildlife resources, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

CONFERENCE REPORT ON S. 734, EXPORT TRADING COMPANY ACT OF 1981

Mr. RODINO submitted the following conference report and statement on the Senate bill (S. 734) to encourage exports by facilitating the infor-

mation and operation of export trading companies, export trade associations, and the expansion of export trade services generally:

CONFERENCE REPORT (H. REPT. No. 97-924)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 734) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—GENERAL PROVISIONS

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1982".

FINDINGS; DECLARATION OF PURPOSE

SEC. 102. (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 percent of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through export trading companies;

(6) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(7) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(8) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(9) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(10) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(11) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by permitting bank holding companies, bankers' banks, and Edge Act corporations and agreement corporations that are subsidiaries of bank holding companies to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade.

DEFINITIONS

SEC. 103. (a) For purposes of this title—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes, but is not limited to, accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services;

(3) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means a person, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(7) the term "antitrust laws" means the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition, and any State antitrust or unfair competition law.

(b) The Secretary of Commerce may by regulation further define any term defined in subsection (a), in order to carry out this title.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 104. The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

TITLE II—BANK EXPORT SERVICES

SHORT TITLE

SEC. 201. This title may be cited as the "Bank Export Services Act".

SEC. 202. The Congress hereby declares that it is the purpose of this title to provide for meaningful and effective participation by bank holding companies bankers' banks, and Edge Act corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section 4(c)(14) of the Bank Holding Company Act of 1956, the Board of Governors of the Federal Reserve System should pursue regulatory policies that—

(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to compete with similar foreign-owned institutions in the United States and abroad;

(2) afford to United States commerce, industry and agriculture especially small and medium-size firms, a means of exporting at all times;

(3) foster the participation by regional and smaller banks in the development of export trading companies; and

(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company's needs.

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 203. Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

"(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up

to another thirty days the period during which such disapproval may be issued.

"(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

"(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(iv) The Board may disapprove any proposed investment only if—

"(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

"(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

"(III) the bank holding company fails to furnish the information required under clause (iii).

"(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

"(vi) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

"(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

"(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

"(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(C) For purposes of this paragraph, an export trading company—

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

"(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental production activities incidental to packaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

"(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

"(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611-631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601-604(a)), which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock of other evidences of ownership in one or more export trading companies.

"(F) For purposes of this paragraph—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

"(ii) the term 'export trade services' includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

"(iii) the term 'bank holding company' shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

"(iv) the term 'extension of credit' shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.".

SEC. 205. On or before two years after the date of the enactment of this Act, the Federal Reserve Board shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives the Board's recommendations with respect to the implementation of this section, the Board's recommendations with respect to the implementation of this section, the Board's recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-size, and minority business concerns, and the Board's recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

SEC. 206. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies as defined in section 4(c)(14) F(ii) of the Bank Holding Company Act of 1956, or to other exporters, when such loans are secured by export accounts receivable or inventories of exportable goods, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

BANKERS' ACCEPTANCES

SEC. 207. The seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372) is amended to read as follows:

"(7)(A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as 'institutions'), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

"(i) which grow out of transactions involving the importation or exportation of goods;

"(ii) which grow out of transactions involving the domestic shipment of goods; or

"(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

"(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this paragraph.

"(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

"(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

"(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or copital stock, the Board shall define an equivalent measure to which the limitations contained in this paragraph shall apply.

"(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction.".

TITLE III—EXPORT TRADE CERTIFICATES OF REVIEW

EXPORT TRADE PROMOTION DUTIES OF SECRETARY OF COMMERCE

SEC. 301. To promote and encourage export trade, the Secretary may issue certificates of review and advise and assist any person with respect to applying for certificates of review.

APPLICATION FOR ISSUANCE OF CERTIFICATE OF REVIEW

SEC. 302. (a) To apply for a certificate of review, a person shall submit to the Secretary a written application which—

(1) specifies conduct limited to export trade, and

(2) is in a form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule or regulation promulgated under section 310.

(b)(1) Within 10 days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall publish in the Federal Register a notice that announces that an application for a certificate of review has been submitted, identifies each person submitting the application, and describes the conduct for which the application is submitted.

(2) Not later than 7 days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall transmit to the Attorney General—

(A) a copy of the application,

(B) any information submitted to the Secretary in connection with the application, and

(C) any other relevant information (as determined by the Secretary) in the possession of the Secretary, including information regarding the market share of the applicant in the line of commerce to which the conduct specified in the application relates.

ISSUANCE OF CERTIFICATE

SEC. 303. (a) A certificate of review shall be issued to any applicant that establishes that its specified export trade, export trade activities, and methods of operation will—

(1) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

(2) not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

(3) not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

(4) not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(b) Within 90 days after the Secretary receives an application for a certificate of review, the Secretary shall determine whether the applicant's export trade, export trade activities, and methods of operation meet the standards of subsection (a). If the Secretary, with the concurrence of the Attorney General, determines that such standards are met, the Secretary shall issue to the applicant a certificate of review. The certificate of review shall specify—

(1) the export trade, export trade activities, and methods of operation to which the certificate applies,

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions the Secretary or the Attorney General deems necessary to assure compliance with the standards of subsection (a).

(c) If the applicant indicates a special need for prompt disposition, the Secretary and the Attorney General may expedite action on the application, except that no certificate of review may be issued within 30 days of publication of notice in the Federal Register under section 302(b)(1).

(d)(1) If the Secretary denies in whole or in part an application for a certificate, he shall notify the applicant of his determination and the reasons for it.

(2) An applicant may, within 30 days of receipt of notification that the application has been denied in whole or in part, request the Secretary to reconsider the determination. The Secretary, with the concurrence of the Attorney General, shall notify the applicant of the determination upon reconsideration within 30 days of receipt of the request.

(e) If the Secretary denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of documents submitted by the applicant in connection with the application for the certificate, the Secretary and the Attorney General shall return to the applicant, not later than 30 days after receipt of the request, the documents and all copies of the documents available to the Secretary and the Attorney General, except to the extent that the information contained in a document has been made available to the public.

(f) A certificate shall be void ab initio with respect to any export trade, export trade activities, or methods of operation for which a certificate was procured by fraud.

REPORTING REQUIREMENT; AMENDMENT OF CERTIFICATE; REVOCATION OF CERTIFICATE

SEC. 304. (a)(1) Any applicant who receives a certificate of review—

(A) shall promptly report to the Secretary any change relevant to the matters specified in the certificate, and

(B) may submit to the Secretary an application to amend the certificate to reflect the effect of the change on the conduct specified in the certificate.

(2) An application for an amendment to a certificate of review shall be treated as an application for the issuance of a certificate. The effective date of an amendment shall be the date on which the application for the amendment is submitted to the Secretary.

(b)(1) If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person holding a certificate of review no longer comply with the standards of section 303(a), the Secretary shall request such information from such person as the Secretary or the Attorney General deems necessary to resolve the matter of compliance. Failure to comply with such request shall be grounds for revocation of the certificate under paragraph (2).

(2) If the Secretary or the Attorney General determines that the export trade, export trade activities, or methods of operation of a person holding a certificate no longer comply with the standards of section 303(a), or that such person has failed to comply with a request made under paragraph (1), the Secretary shall give written notice of the determination to such person. The notice shall include a statement of the circumstances underlying, and the reasons in support of, the determination. In the 60-day period beginning 30 days after the notice is given, the Secretary shall revoke the certificate or modify it as the Secretary or the Attorney General deems necessary to cause the certificate to apply only to the export trade, export trade activities, or methods of operation which are in compliance with the standards of section 303(a).

(3) For purposes of carrying out this subsection, the Attorney General, and the Assistant Attorney General in charge of the antitrust division of the Department of Justice, may conduct investigations in the same manner as the Attorney General and the Assistant Attorney General conduct investigations under section 3 of the Antitrust Civil Process Act, except that no civil investigative demand may be issued to a person to whom a certificate of review is issued if such person is the target of such investigation.

JUDICIAL REVIEW; ADMISSIBILITY

SEC. 305. (a) If the Secretary grants or denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or modifies a certificate pursuant to section 304(b), any person aggrieved by such determination may, within 30 days of the determination, bring an action in any appropriate district court of the United States to set aside the determination on the ground that such determination is erroneous.

(b) Except as provided in subsection (a), no action by the Secretary or the Attorney General pursuant to this title shall be subject to judicial review.

(c) If the Secretary denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or amends a certificate, neither

the negative determination nor the statement of reasons therefor shall be admissible in evidence, in any administrative or judicial proceeding, in support of any claim under the antitrust laws.

PROTECTION CONFERRED BY CERTIFICATE OF REVIEW

SEC. 306. (a) Except as provided in subsection (b), no criminal or civil action may be brought under the antitrust laws against a person to whom a certificate of review is issued which is based on conduct which is specified in, and complies with the terms of, a certificate issued under section 303 which certificate was in effect when the conduct occurred.

(b)(1) Any person who has been injured as a result of conduct engaged in under a certificate of review may bring a civil action for injunctive relief, actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for the failure to comply with the standards of section 303(a). Any action commenced under this title shall proceed as if it were an action commenced under section 4 or section 16 of the Clayton Act, except that the standards of section 303(a) of this title and the remedies provided in this paragraph shall be the exclusive standards and remedies applicable to such action.

(2) Any action brought under paragraph (1) shall be filed within two years of the date the plaintiff has notice of the failure to comply with the standards of section 303(a) but in any event within four years after the cause the action accrues.

(3) In any action brought under paragraph (1), there shall be a presumption that conduct which is specified in and complies with a certificate of review does comply with the standards of section 303(a).

(4) In any action brought under paragraph (1), if the court finds that the conduct does comply with the standards of section 303(a), the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(5) The Attorney General may file suit pursuant to section 15 of the Clayton Act (15 U.S.C. 25) to enjoin conduct threatening clear and irreparable harm to the national interest.

GUIDELINES

SEC. 307. (a) To promote greater certainty regarding the application of the antitrust laws to export trade, the Secretary, with the concurrence of the Attorney General, may issue guidelines—

(1) describing specific types of conduct with respect to which the Secretary, with the concurrence of the Attorney General, has made or would make determinations under sections 303 and 304; and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Section 553 of title 5, United States Code, shall not apply to the issuance of guidelines under subsection (a).

ANNUAL REPORTS

SEC. 308. Every person to whom a certificate of review is issued shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, that updates where necessary the information required by section 303(a).

DISCLOSURE OF INFORMATION

SEC. 309. (a) Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5, United States Code.

(b)(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding, subject to appropriate protective orders,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Secretary deems disclosure of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule or regulation promulgated under section 310 permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

RULES AND REGULATIONS

SEC. 310. The Secretary, with the concurrence of the Attorney General, shall promulgate such rules and regulations as are necessary to carry out the purposes of this Act.

DEFINITIONS

SEC. 311. As used in this title—

(1) the term "export trade" means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation;

(2) the term "service" means intangible economic output, including, but not limited to—

(A) business, repair, and amusement services,

(B) management, legal, engineering, architectural, and other professional services, and

(C) financial, insurance, transportation, informational, and any other data-based services, and communication services;

(3) the term "export trade activities" means activities or agreements in the course of export trade;

(4) the term "methods of operation" means any method by which a person conducts or proposes to conduct export trade;

(5) the term "person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons;

(6) the term "antitrust laws" means the antitrust laws, as such term is defined in the first section of the Clayton Act (15 U.S.C. 12), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 prohibits unfair methods of competition, and any State antitrust or unfair competition law;

(7) the term "Secretary" means the Secretary of Commerce or his designee; and

(8) the term "Attorney General" means the Attorney General of the United States or his designee.

EFFECTIVE DATES

SEC. 312. (a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(b) Section 302 and section 303 shall take effect 90 days after the effective date of the rules and regulations first promulgated under section 310.

TITLE IV—FOREIGN TRADE ANTITRUST IMPROVEMENTS

SHORT TITLE

SEC. 401. This title may be cited as the "Foreign Trade Antitrust Improvements Act of 1982".

AMENDMENT TO SHERMAN ACT

SEC. 402. The Sherman Act (15 U.S.C. 1 et seq.) is amended by inserting after section 6 the following new section:

"SEC. 7. This Act shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

"(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

"(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

"(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

"(2) such effect gives rise to a claim under the provisions of this Act, other than this section.

If this Act applies to such conduct only because of the operation of paragraph (1)(B), then this Act shall apply to such conduct only for injury to export business in the United States.".

AMENDMENT TO FEDERAL TRADE COMMISSION ACT

SEC. 403. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end thereof the following new paragraph:

"(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

"(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

"(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

"(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

"(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.".

And the House agree to the same.

That the House recede from its amendment to the title of the Senate bill.

For title I of the House amendment and modifications committed to conference:

CLEMENT J. ZABLOCKI,
JONATHAN BINGHAM,
DENNIS E. ECKART,
DON BONKER,
HOWARD WOLPE,
WM. BROOMFIELD,
ROBERT J. LAGOMARSINO,
ARLEN ERDAHL,
BENJAMIN A. GILMAN,
MILLICENT FENWICK,

For title II of the House amendment and modifications committed to conference:

FERNAND J. ST GERMAIN,
FRANK ANNUNZIO,
JOE MINISH,
JOHN J. LAFALCE,
DOUG BARNARD,
J. W. STANTON,
CHALMERS P. WYLIE,
STEWART B. MCKINNEY,
JIM LEACH,

For title III of the House amendment and modifications committed to conference

PETER W. RODINO,
BILL HUGHES,
ROBERT MCCLORY,
M. CALDWELL BUTLER,

Managers on the Part of the House.

JAKE GARN,
JOHN HEINZ,
WILLIAM ARMSTRONG,
JOHN H. CHAFEE,
JOHN C. DANFORTH,
DON RIEGLE,
BILL PROXMIRE,
CHRISTOPHER J. DODD,
ALAN DIXON,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 734) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I

SHORT TITLE

The committee of conference agreed to the House provision: "The Export Trading Company Act of 1982".

FINDINGS

The House amendment contains Congressional findings with respect to the impact of exports on U.S. jobs, the role of service-related industries in U.S. exports, the effects of trade deficits on the value of the dollar, and the responsibilities of the Department of Commerce in export promotion, which are not contained in the Senate bill.

The Senate bill contains findings with respect to the role of the United States as an exporter of agricultural products, and the need for exporters to achieve greater economies of scale, which are not in the House amendment. Other Senate and House findings are similar or identical.

The committee of conference agreed to a combination of the House and Senate provisions, all the findings in the House amendment and an amended version of the Senate finding with respect to agricultural exports.

PURPOSE

The statement of the bill's purpose in the House amendment includes references to the creation of an export trading company promotion office in the Department of Commerce, investment by certain banks in export trading companies, and modification of antitrust laws with respect to export trade, references which are not contained in the Senate bill.

The committee of conference agreed to the House provision with an amendment adding reference to the Edge Act and Agreement corporations as being eligible to invest in trading companies if those corporations are subsidiaries of bank holding companies.

DEFINITIONS

A. The committee of conference agreed and reaffirmed that the definitions contained in title I of the bill apply only to the provisions of title I, and not to the other titles of the bill. To the extent possible, however, the definitions recommended by the committee of conference in title I conform with the definitions recommended in other titles.

The Senate bill defines "goods produced in the United States" as those containing no more then 50% (by value) imported components or materials.

The House amendment contains no such definition.

The committee of conference deletes this definition.

Specific consideration was given to the status, under this and other definitions in the bill, of fish harvested by U.S. flag vessels within the United States fish conservation zone and sold at sea or in a foreign port without having otherwise been landed or processed in the United States. The committee of conference agreed that fish so harvested and sold should be regarded as goods produced in the United States, and their sales as constituting export trade within the meaning of this title and other titles of the bill.

B. The definition of "services produced in the United States" in the Senate bill and the definition of "services" in the House amendment are similar, except that the Senate bill includes some services not mentioned in the House provision, and contains the additional requirement that at least 50% of the value of such services be attributable to the United States.

The committee of conference agreed to the House provision with an amendment to include additional specific services contained in the Senate bill.

C. The definition of "export trade services" in the Senate bill includes "product research and design", which is not specified in the House amendment.

The committee of conference agreed to the Senate provision.

D. The definition of "export trading company" in the Senate bill includes nonprofit organizations, which is not contained in the House amendment. The definition in the House amendment requires export trading companies to be operated principally for the export of U.S. goods, or for facilitating such exports by unaffiliated persons, while the Senate bill requires both.

The committee of conference agreed to a compromise of the Senate and House provisions which includes nonprofit organizations, but permits export export trading companies to perform only one of the two functions contained in both the House and Senate provisions.

E. The House amendment includes definitions of "export trade association" and "State."

The Senate bill has no such provision.

The committee of conference adopted the Senate position.

E. The Senate bill includes a definition of "Secretary", as meaning the Secretary of Commerce.

The House amendment contains no such definition.

The committee of conference agreed with the House position.

F. A definition of "company" contained in the Senate bill, but not in the House amendment, is incorporated in the definition of "export trading company" adopted by the committee of conference.

The conference substitute includes a definition of "anti-trust laws" contained in title III of the Senate bill, but not contained in the House bill, with an amendment deleting reference to section 6 of the Federal Trade Commission Act.

ISSUANCE OF REGULATIONS

The Senate bill authorizes the Secretary of Commerce by regulation to further define terms contained in title I.

The House amendment contains no such authorization.

The committee of conference agreed to the Senate provision.

OFFICE OF EXPORT TRADE

The House amendment directs the Secretary of Commerce to establish an office in that Department to promote and assist export trade associations and export trading companies.

The Senate bill similarly directs the Secretary to promote export trading companies, but does not require the establishment of a Commerce Department office for that purpose.

The committee of conference agreed to the House provision.

TITLE II—BANK EXPORT SERVICES ACT

The Senate receded to the House insofar as the basic statutory framework within which bank-affiliated export trading companies (ETCs) will operate. By placing the ETC within the bank holding company structure rather than within the bank, as the Senate bill provided, the conferees believe that adequate safeguards will continue to exist to minimize potential risk to the bank or banks within the holding company structure and that adequate separation will exist between a bank's involvement in export trade activities and its deposit taking function. The decision to accept the bank holding company structure carried with it to a large extent the utilization of existing regulatory provisions in effect in connection with existing bank holding application practices and procedures except where modified to insure an adequate but yet a minimal regulatory presence. The House, consequently, receded to the Senate to ensure a streamlined application process with respect to basic definitional matters such as what an ETC is and what activities it can engage in, and on a number of ancillary matters such as the authorization for Export-Import Bank loan guarantees. In addition, definitive guidance is provided to the Federal Reserve Board on how to implement this new statute in a way that will insure the rapid growth of ECTs consistent with the purposes of this Act without unnecessary regulation.

REGULATORY FRAMEWORK

S. 734, as a free standing statute, would have permitted a wide variety of banking institutions to invest in ETCs. Inasmuch as these institutions are regulated by a number of different governmental agencies, S. 734 required a number of general regulatory provisions. H.R. 6016, reported by the House Committee on Banking, Finance and Urban Affairs, on the other hand, elected to restrict banking institution investment in ETCs to bank holding companies and bankers' banks, and therefore constructed its

version of this legislation as an amendment to the Bank Holding Company Act of 1956 (treating bankers' banks as holding companies for purposes of this Act). As a result, the various constraints on bank holding company activities already in the Bank Holding Company Act would also automatically apply to invest in ETCs, and it was not necessary to repeat them in the House version of the legislation. Similarly, the restriction on investment to bank holding companies allowed the House to dispense with much of the regulatory complexity of the Senate bill.

In conference, the managers on the part of the Senate, recognizing the House's preference for channeling risks of this kind through holding companies rather than through banks directly, agreed to recede to the House on most basic structural issues, with certain modifications.

As a result, the provisions of the House amendment relating to the amount of bank holding company capital and surplus which can be invested in or loaned to an ETC, the 60-day disapproval procedure on the part of the Federal Reserve Board for such proposed investments, including the notification provision, and the exemption from Section 23A of the Federal Reserve Act are all incorporated in the conference agreement. Similarly, the Senate provisions relating to judicial review, rulemaking authority, state banking laws, and protection of the safety and soundness of the bank, are all deleted, largely because they are covered by various sections of the Bank Holding Company Act which will now apply to investment in ETCs by virtue of the conferees' decision to accept the House approach of placing ETC within that Act. The Senate also receded to the House and agreed to eliminate the restriction on an ETC having the same name as its bank organization parent.

There were, however, several areas where the conferees made significant modifications in the approach of the House amendment.

Guidance to the Federal Reserve Board

Most important in that regard is the decision of the conferees to provide additional guidance to the Federal Reserve Board in administering this Act through the addition of a new Section 202 at the beginning of Title II. This section declares it to be the purpose of Title II to provide for meaningful and effective participation by bank holding companies in the financing and development of export trading companies, and that, specifically, the Board should pursue regulatory policies that:

(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to compete with similar foreign-owned institutions in the United States and abroad.

(2) afford to United States commerce, industry and agriculture, especially small and medium-size firms, a means of exporting at all times;

(3) foster the participation by regional and smaller banks in the development of export trading companies; and

(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company's needs."

These objectives, along with the purpose set forth in Title I of the Act, if properly pursued by the Federal Reserve Board, will guarantee the development of effective, "full service" trading companies with bank holding company involvement that will effectively and aggressively market American products and will not be disadvantaged or limited in competing with foreign-owned export trading companies or with ETCs owned by nonbank firms.

The new section 4(c)(14)(A)(iv) of the Bank Holding Company Act created by the conference substitute provides for disapproval of proposed investments in an export trading company only if the Board determines:

(1) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

(2) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company; or

(3) the bank holding company fails to furnish the information required by Board regulations.

The second criterion above is a modification proposed by the Senate conferees and accepted by the House. The original language of the House amendment referred only to the "financial or managerial resources of the companies involved." However, the legislative history of that amendment suggested a narrower intent, i.e., "risk to the bank".

In order to reach the intent of the amendment more closely, the conferees agreed on revised wording to clarify the expectation that the Board will focus on risk to the bank, as opposed to other affiliates, and on the specific impact the proposed investment will have on the bank.

Definition of Export Trading Company

It is clearly the purpose of both the House and Senate to stimulate the establishment of export trading companies to improve U.S. export capabilities with corresponding favorable effects on American balance of trade, economic growth and employment. The major public benefit sought by enactment of export trading company legislation is jobs for Americans through the promotion of exports.

The necessity of export expansion has never been more obvious. The House amendment to S. 734 would require that a bank-affiliated export trading company be operated "exclusively" for purposes of exporting goods and services produced in the United States and would have permitted importing that was incidental to export activities—that is an import agreement that enhanced export activities would be acceptable. The use of the term "exclusively" was designed to ensure the export promotion and job creation character of the legislation.

The House, however, receded to the Senate by adopting the Senate's use of the term "principally" in defining the purposes of a bank-affiliated export trading company. This is no way implies a reduced commitment to the bill's purpose: U.S. export promotion. On the contrary, while it is understood that ETCs will periodically have to engage in importing, barter, third party trade, and related activities, the managers intend that such activity be conducted only to further the purposes of the Act. The managers do not expect the preponderance of ETC activity to involve importing.

ETC affiliation with banks represents a breach of the traditional separation of banking and commerce and has necessitated provision for a limited but adequate regulatory presence. It is the intent of the managers that the regulatory authority, in addition to facilitating bank related investments in ETCs, examine, supervise, and regulate ETCs in such a way as to assure that bank-affiliated ETCs operate in a manner consistent with the Congressional intent that ETCs promote, increase, and maximize U.S. exports.

Product Modification

The conferees retained the prohibitions on manufacturing and agricultural production that were included in both the Senate bill and the House amendment. The export trading company is intended to be a service-providing organization and not the producer of the products it is exporting. The Senate, however, receded to the House amendment permitting the ETC to undertake incidental product modification, including repackaging, reassembling or extracting byproducts, as is necessary to enable U.S. goods or services to conform with foreign country requirements or to facilitate their sale in foreign countries. The ETC would also be permitted to provide any service deemed necessary to protect it from the additional risk incurred by such product modification.

Joint Ventures

The conferees intend that this title not affect the ability of individuals and organizations to form ETCs. State and local government entities, including port authorities, industrial development corporations, and other non-profit organizations, could be an important source of overall export expansion and of the development of innovative export programs keyed to local, state, and regional needs. In addition, other organizations, for example, agricultural cooperatives, have similar experience and needs. This title in no way affects the ability of such organizations to continue these efforts including their ability to organize, own, participate in or support ETCs. This title addresses only the question of whether banking organizations should be authorized to invest in ETCs and, if so, the restrictions which would be placed on ETCs sponsored by such banking organizations.

The conferees that this title does not preclude a banking organization that is authorized to invest in an ETC from engaging in a joint venture, partnership or other cooperative arrangement with other authorized banking organizations or other nonbanking firms to organize an ETC. Such cooperative arrangements are in fact to be encouraged. There are numerous firms and organizations which may want to form an ETC but feel that they lack either investment capital or expertise. A banking organization may well be able to provide such assistance through a joint venture or partnership arrangement with these other firms. The ETC so supported, however would be subject to the restrictions contained in this legislation inasmuch as a banking organization is investing in that ETC.

Permitted Services

Both the Senate bill and the House amendment contained a list of services which a bank-affiliated export trading company is permitted to provide. Those lists were identical except for three elements: (1) the Senate bill used the phrase "including, but not limited to" to make clear the list is a non-exclusive one; (2) the House amendment contained an explicit reference to "taking title"; and (3) the Senate bill's list included "insurance".

The House, in receding to the Senate on the first issue, insured that the list of permitted services is a non-exclusive one. With regard to the second issue, "taking of title", the Senate receded to the House. The Senate bill would have implicitly permitted such an activity. To eliminate any possible

ambiguity, the explicit authority contained in the House version was adopted.

Regarding "insurance", the House receded to the Senate with an amendment. The conferees determined it to be appropriate to permit bank holding companies to provide insurance on risks resident or located, or activities performed, outside of the United States. Since a large proportion of cargos moving overseas originate at a point that is located away from the port of shipment, it has become customary for insurance carriers providing insurance for such cargos to endorse their policies to cover cargos for export from the point of their origin in final transit to their destination, including ordinary delay and storage. Such ocean cargo "warehouse to warehouse" coverages provide insurance protection for all risks related to the land, air, or water transportation of the cargo in the United States as well as during the overseas transportation. In addition to permitting export trading companies to provide insurance on risks outside of the United States, therefore, the conferees determined that it would facilitate the provision of export trade services for export trading companies to provide ocean cargo "warehouse to warehouse" insurance as well, and accordingly amended the definition of insurance activities permitted in support of export trade services, reflecting the conferees' decision.

The conferees also considered the possibility of expanding the range of institutions eligible to invest in ETCs to include Edge Act Corporations. This proposal was included in the Senate bill because the expertise and experience of Edge Act Corporations in international trade matters made it logical to encourage their involvement in ETCs. On the other hand, the conferees were also concerned about the added potential risk to a bank if an ETC were formed by an Edge Act Corporation that was a subsidiary of a bank. It was the strong view of the House that the best protection for the bank and its depositors was to channel all trading company activity through the bankers' bank and bank holding company structures. Accordingly, the conferees agreed that Edge Act Corporations that are subsidiaries of bankholding companies are eligible to invest in ETCs. The inclusion of bankers' banks as eligible investors—a provision of both the Senate bill and the House amendment, will also facilitate the involvement of smaller banks in ETCs.

The conferees also discussed whether the mechanism for Board approval of a proposed investment should apply only to investments that would give the holding company control of the ETC, as in the Senate bill, or whether the standard in the Bank Holding Company Act requiring Board consideration of any investment constituting over 5 percent of an export trading company should apply.

In this case, the conferees, recognizing the newness of this concept, opted for the stricter House approach contained in the Bank Holding Company Act. In doing so, however, the conferees stressed their intent that the Board, as soon as possible, both decentralize this review process to the level of the Federal Reserve District Banks and consider providing guidelines for smaller investments (those that would result in a controlling interest for the holding company) that would minimize the review process and reduce the regulatory burden on the Board.

SECTION 23A

The Senate receded to the House on the exemption of bank-affiliated export trading companies from the provisions of Section 23A of the Federal Reserve Act. During the start-up phase in an effort to encourage maximum bank participation in export trading company activities, the conferees believe that the overall limitation of ten percent of the consolidated capital and surplus of the bank holding company, on extensions of credit to an affiliated export trading company, would adequately protect affiliated banks from excessive risks, and that the exemption from the collateral requirement of existing law is necessary in view of the type of assets most ETC's would have. The conferees, however, intend to review the decision in connection with an imminent major revision of 23A either as part of a possible conference on legislation separately passed by the Senate or at such time as revisions to 23A receive final consideration by the Congress.

REPORTS

Section 205 of the substitute contains the Senate bill's provision calling for a report by the Federal Reserve two years after the enactment of this Act on the implementation of the banking provisions, recommendations for further changes in U.S. law to facilitate the financing of U.S. exports, and recommendations on the effects of ownership of U.S. banks by foreign banking organizations affiliated with trading companies doing business in the United States.

EXPORT-IMPORT BANK

The House receded with an amendment to the Senate on the latter's provision establishing a program of Export-Import Bank guarantees for loans extended by financial institutions or other creditors to ETCs or other exporters, where such loans are secured by export accounts receivable or inventories of exportable goods. The House amendment to the Senate provision clarifies the eligibility of public creditors (port authorities, agencies of state and local governments, and governmental instrumentalities) as well as private creditors for Export-Import bank guarantees.

BANKERS' ACCEPTANCES

The conferees want to emphasize strongly that the adoption of this long overdue liberalization of the present limits on bankers' acceptance in on way is intended to impinge upon or restrict the inherent powers of the Federal Reserve Board to issue appropriate regulations to prevent circumvention of the new liberalized limits through the imprudent use of participation agreements. The conferees have been advised of an ongoing analysis by the Federal Financial Institutions Examination Council on the proper treatment of participation of bankers' acceptances, preparatory to the development of a proposed united policy approach by each Federal regulatory agency. The conferees encourage this action to the extent it is consistent with and in furtherance of the language, history, and purposes of this legislation or demonstrable safety and soundness concerns. In this regard, the conferees require that the Council report to the respective Committees of jurisdiction within 18 months after the date of enactment, the results of its analysis, a summary of any individual regulatory agency action viewed as needed, and any legislative recommendations relating to safety and soundness considerations. In the meantime, however, the conferees stress that no action should be taken, either by regulation or other requirement to preclude the use of bankers' acceptances through the use of participations, as contemplated by this legislation, by the widest number of American banks.

TITLE III—EXPORT TRADE CERTIFICATES OF REVIEW

The House and Senate Conferees agreed upon a substitute amendment for Title III of S. 734 which incorporates elements from both S. 734 and the House Amendment to S. 734.

Section 301 is a statement that the purpose of this Title is to promote U.S. export trade by affording U.S. business an export trade certificate of review process.

Section 302 provides the procedures a person must follow to apply for a certificate of review. To obtain a certificate of review, any individual, firm, partnership, association, public or private corporation, or other legal entity, including a public or private body, submits a written application to the Secretary of Commerce. The Secretary of Commerce shall forward applications and other specified information to the Attorney General within 7 days of receipt. All applications must be in a form and contain all information required by regulation.

Within 10 days of receiving the application, the Secretary of Commerce shall publish in the Federal Register a notice identifying the applicant and describing the conduct for which certification is sought.

Section 303(a) provides that a certificate shall be issued to a person who establishes that its proposed conduct will (1) result in neither a substantial lessening of competition or substantial restraint of trade within the United States nor constitute a substantial restraint of the export trade of any competitor of the applicant; (2) not unreasonably enhance, stabilize, or depress prices within the United States; (3) not constitute unfair methods of competition against competitors engaged in the export trade of goods or services exported by the applicant; and (4) not reasonably be expected to result in the consumption or resale in the United States of goods or services exported by the applicant. The Conferees intend that the standards set forth in this subsection encompass the full range of the antitrust laws.

Section 303(b) provides that within 90 days, the Secretary must determine whether the applicant's export trade, export trade activities, and methods of operation meet the standards of Section 303(a). The Secretary shall not issue the certificate without the concurrence of the Attorney General that the standards of Section 303 are met. The certificate must specify the export trade, export trade activities, and methods of operation certified, the person to whom the certificate is issued, and any terms and conditions deemed necessary by the Secretary or the Attorney General to assure compliance with the standards of subsection (a).

Section 303(c) provides for expedited certification where necessary; however, no certificate may issue before 30 days from the date of publication of the Federal Register notice, whether or not the application is expedited.

Section 303(d)(1) provides that the Secretary shall notify the applicant of an adverse determination and the reasons therefore.

Section 303(d) permits an applicant to request reconsideration of the Secretary's decision. The Secretary, with the concurrence of the Attorney General, shall respond within 30 days.

Section 303(e) provides for the return of documents submitted in connection with an application upon written request of an applicant whose certificate of review has been denied.

Section 303(f) provides that any aspect of a certificate procured by fraud is void ab initio.

Section 304(a) provides that the holder of any certificate of review is obligated to report to the Secretary of changes relevant to the matters contained in the certificate and may seek an amendment to the certificate to reflect any necessary change. An applica-

tion for amendment is to be treated as an application for the issuance of a certificate.

Section 304(b)(1) provides that the Secretary shall, at his own initiative or at the request of the Attorney General, seek information from a certificate-holder to resolve any uncertainty concerning compliance. Failure to comply with such a request is grounds for modification or revocation of the certificate pursuant to subsection (b)(a).

Section 304(b)(2) provides that the Secretary of Commerce, at his own initiative or at the request of the Attorney General, may seek revocation of the certificate.

Section 304(b)(3) is intended to assure that the Attorney General investigate persons other than the certificate-holder through use of the civil investigative demand as set forth in the Antitrust Civil Process Act as amended (15 U.S.C. 1311 et seq.) regarding activities which may not be in compliance with the standards in section 303(a). If, upon an investigation, the Attorney General determines that the export trade activities or methods of operation of the certificate-holder no longer comply with section 303(a) standards, he shall advise the Secretary who then must initiate a revocation or modification proceeding under subsection (b)(2).

Section 305(a) provides that a review of a grant or denial of an application for a certificate or an amendment thereto or revocation or modification thereof of any person aggrieved by such determination if such suit is brought within 30 days of the determination. Normally, the administrative record shall be adequate so that it will not be necessary to supplement it with additional evidence.

The Senate bill required, prior to revocation or modification of a certificate, a hearing as appropriate under the circumstances. The House bill did not require a hearing. In following the House approach, the Conferees understood that, should the Secretary nevertheless establish a hearing procedure, S. 734 would not require use of the procedures of the Administrative Procedures Act.

Section 305(b) provides that no action by the Secretary or Attorney General under this title, except for an action under Subsection 305(a), is subject to judicial review.

Section 305(c) makes explicit that any denial by the Secretary, in whole or in part, of a proposal for issuance of a certificate, or amendment thereto, or any determination by the Secretary to revoke the application, or reasons therefor, is not admissible in evidence in any administrative or judicial proceeding in support of a claim under the antitrust laws as defined in this title.

Subsection 306(a) protects a certificate-holder from criminal and civil antitrust actions, under both federal and state laws, whenever the conduct that forms the basis of the action is specified in, and complies with, the terms of the certificate. Conduct which falls outside the scope of, or violates the terms of, the certificate is ultra vires and would not be protected. Such conduct would remain fully subject to criminal sanctions as well as both private and governmental civil enforcement suits under the antitrust laws.

The Conferees agreed that the protections conferred by a certificate extend to all members of a certified entity provided that each member is listed on the certificate.

Section 306(b)(1) permits persons injured by the conduct of a certificate-holder to bring suit for injunctive relief and single damages for a violation of the standards set forth in Section 303(a). Pursuant to section/ 306(b)(2), any such suit must be brought within two years of the date the plaintiff has notice of the violation. Section 306(b)(3) accords a presumption of legality to persons operating within the terms of conduct specified in a certificate. Subsection (b)(4) permits a certificate holder to recover the cost of defending the suit (including reasonable attorneys fees) if the claimant fails to establish that the standards of section 303(a) have been violated.

Section 306(b)(1) provides that all procedures applicable to antitrust litigation, including laws and rules to expedite a proceeding or to prevent dilatory tactics, apply to actions brought under this title. The standards under section 303(a), the remedies under this subsection, as well as the provisions concerning the statute of limitations, a presumption of validity, and the awarding of costs to the certificate holder, including attorneys fees, remain the exclusive provision governing actions under this Act. Moreover, section 16 of the Clayton Act, so far as it pertains to injunctive actions for threatened (as opposed to actual) injury or to violations of the antitrust laws such as sections 2, 3, 7, and 8 of the Clayton Act, are inapplicable to actions authorized by section 306 of this Act.

Section 306(b)(5) permits the Attorney General, notwithstanding the limitations in section 306(a)(1), to bring suit pursuant to Section 15 of the Clayton Act (15 U.S.C. 25) to enjoin conduct threatening clear and irreparable harm to the national interest.

Both the House and Senate versions contemplated the promulgation of guidelines to assist applicants, potential applicants, and the public in understanding the issuing authority's interpretation of the certification criteria. The Conferees agreed upon section 307, which is similar to the House version, except that the Secretary issues the guidelines. Under section 307, the Secretary, with the concurrence of the Attorney General, may publish guidelines that describe conduct with respect to which determinations have been made or might be made, with a summary of the factual and legal bases underlying the determinations. The guidelines may be based upon real or hypothetical cases. Because the purpose of this section is to disseminate information, the Secretary is not required to use rulemaking procedures, although he may if he so chooses.

The Conferees agreed upon section 308, which tracks the Senate version of a similar provision. Under section 307, every person to whom a certificate has been issued shall submit to the Secretary an annual report, in such form and at such time that he may require, that updates, where necessary, the information required by section 302(a).

The Conferees agreed upon section 309, which tracks version in the House. Under subsection 30.9(a), all information submitted by a person in connection with the issuance, amendment, or revocation of a certificate of review is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552. In addition, under subsection (b)(1), no officer or employee of the United State shall disclose commerical or financial information submitted in connection with the issuance, amendment or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information. This limitation is subsect to six exceptions, contained in subparagraph 309(b)(2). The first exception in subsection 309(b)(2)(A), covers requests of Congress or a committee of Congress. This provision would not authorize release to an individual Member of Congress, but would authorize release to a Chair acting for the Committee or Subcommittee. The Conferees understand that Committees will exercise appropriate care to protect confidential information. The second exception, subparagraph 309(b)(2)(B), permits disclosure in a judicial or administrative proceeding subject to an appropriate protective order; the third exception, subparagraph 309(b)(2)(C), permits disclosure with the consent of the submitting party; the forth exception, suparagraph 309(b)(2)(D), permits necessary disclosures in making determinations on applications; the fifth exception, subparagraph 309(b)(2)(E), permits disclosure in accordance with statute; and the final exception, subparagraph 309(b)(2)(F), permits disclosure to agencies of the United States and the States if the receiving agency will agree to the limitation contained in subparagraph (A) through (E).

Both the House and Senate versions contemplated the issuance of implementing rules. The Conferees agreed on section 310, which directs the Secretary, with the concurrence of the Attorney General, to promulgate rules and regulations necessary to carry out the purposes of the Act.

Both the Senate and the House versions defined important terms. The Conferees agreed to include, in section 311, a definition section which adopts elements from both versions as well as certain additional definitions necessary to ensure proper interpretation of Title III.

The Conferees agreed upon section 312, which is similar to the effective date provision in the House version. Under subsection 312(a), all provisions except sections 302 and 303 take effect immediately upon enactment of the legislation. Under subsection 312(b), sections 302 and 303 the application and issuance provisions, take effect 90 days after the rules are promulgated under section 310.

TITLE IV—FOREIGN TRADE ANTITRUST IMPROVEMENTS

The House and Senate Conferees agreed upon a new Title IV which supplements the antitrust certification provisions (Title III).

The new title incorporates two sections from H.R. 5235, passed by the House on August 3, 1982. These sections modify the Sherman Act and Section 5 of the Federal Trade Commission Act to require a "direct, substantial, and reasonable foreseeable" effect on commerce in the United States, or on the export commerce of a U.S. resident, as a jurisdictional threshold for enforcement actions.

For title I of the House amendment and modifications committed to conference:

CLEMENT J. ZABLOCKI,
JONATHAN BINGHAM,
DENNIS E. ECKART,
DON BONKER,
HOWARD WOLPE,
WM. BROOMFIELD,
ROBERT J. LAGOMARSINO,
ARLEN ERDAHL,
BENJAMIN A. GILMAN,
MILLICENT FENWICK.

For title II of the House amendment and modifications committed to conference:

FERNAND ST GERMAIN,
FRANK ANNUNZIO,
JOE MINISH,
JOHN J. LAFALCE,
DOUG BARNARD, JR.,
J. W. STANTON,
CHALMERS P. WYLIE,
STEWART B. MCKINNEY,
JIM LEACH.

For title III of the House amendment and modifications committed to conference:

PETER W. RODINO,
BILL HUGHES,
ROBERT MCCLORY,
M. CALDWELL BUTLER,

Managers on the Part of the House.

JAKE GARN,
JOHN HEINZ,
WILLIAM ARMSTRONG,
JOHN H. CHAFEE,
JOHN C. DANFORTH,
DON RIEGLE,
BILL PROXMIRE,
CHRISTOPHER J. DODD,
ALAN DIXON,
Managers on the Part of the Senate.

□ 1600

LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I take this time for the purpose of inquiring of either the Chair or the distinguished majority leader the balance of the program, at least as currently scheduled.

I am happy to yield to my friend from Texas, the distinguished majority leader.

Mr. WRIGHT. I thank the gentleman for yielding.

In response to the distinguished minority leader, it is the purpose of the Chair at this time to take unanimous-consent requests which have been cleared on both sides and on which there is no controversy.

As we understand it, there are some four that fit in that category.

Immediately following those unanimous-consent requests, it is the purpose of the Chair to recognize the gentleman from Mississippi (Mr. WHITTEN), the chairman of the Committee on Appropriations, in order that he may bring up the conference report on the continuing appropriations.

Then other available conference reports will follow. There may be some conference reports that would be ready for our consideration.

Mr. MICHEL. Mr. Speaker, I thank the distinguished majority leader.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2330) entitled "An act to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes."

The message also announced that the Senate agrees to the amendments of the House with amendments to bills of the Senate of the following titles:

S. 2273. An act to amend section 7 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7706) to extend authorizations for appropriations, and for other purposes;

S. 2420. An act to protect victims of crime; and

S. 2577. An act to authorize appropriations for environmental research, development, and demonstrations for the fiscal year 1983, and for other purposes.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 1018) entitled "An act to protect and conserve fish and wildlife resources, and for other purposes," agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. STAFFORD, Mr. CHAFEE, Mr. GORTON, Mr. RANDOLPH, and Mr. MOYNIHAN to be the conferees on the part of the Senate.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 1371. An act to amend section 12 of the Contract Disputes Act of 1978;

H.R. 3467. An act to authorize appropriations under the Arms Control and Disarmament Act, and for other purposes;

H.R. 6204. An act to provide for appointment and authority of the Supreme Court Police, and for other purposes; and

H.R. 6946. An act to amend title 18 of the United States Code to provide penalties for certain false identification related crimes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 6946) entitled "An act to amend title 18 of the United States Code to provide penalties for certain false identification related crimes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. THURMOND, Mr. LAXALT, Mr. HATCH, Mr. SIMPSON, Mr. HUMPHREY, Mr. BIDEN, Mr. DECONCINI, and Mr. HEFLIN to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills and joint resolutions of the following titles, in which the concurrence of the House is requested:

S. 2574. An act to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes;

S. 2671. An act to provide for the establishment of a Commission on the Bicentennial of the Constitution;

S. 3002. An act to increase the authorization of appropriations for the Allen J. Ellender fellowship program, and for other purposes;

S.J. Res. 228. Joint resolution to provide for the designation of the week beginning on October 24, 1982, as "National Tourette Syndrome Awareness Week";

S.J. Res. 236. Joint resolution to designate the week of October 24 through 28, 1982, as "National Water Resources Week";

S.J. Res. 237. Joint resolution designating November 14, 1982, as "National Retired Teachers Day";

S.J. Res. 260. Joint resolution to designate the period commencing January 1, 1983, and ending December 31, as the Tricentennial Anniversary Year of German Settlement in America";

S.J. Res. 261. Joint resolution to designate "National Housing Week"; and

S.J. Res. 262. Joint resolution to designate the month of November 1982 as "National Christmas Seal Month."

The message also announced that the Secretary of the Senate be directed to return to the House of Representatives, pursuant to House Resolution 605, the bill (S. 1210) entitled "An act amending the Environmental Quality Improvement Act of 1970," together with all accompanying papers.

PREFERENTIAL TREATMENT IN ADMISSION OF CERTAIN CHILDREN OF U.S. CITIZENS

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1698) to amend the Immigration and Nationality Act to provide preferential treatment in the admission of certain children of U.S. citizens, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

Mr. FISH. Mr. Speaker, reserving the right to object, and I do so only with great joy that we are here at this point, to ask the chairman of the Subcommittee on Immigration, Refugees, and International Law of the Committee on Judiciary if he would explain S. 1698.

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield to me?

Mr. FISH. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Speaker, let me say to my friend from New York, the ranking member on our subcommittee, that what the gentleman from Kentucky is going to do in a few more legislative steps is to bring to the attention of the House the so-called Amerasian bill in order that, before we leave for the pre-election recess, we will have passed and made a matter of law a method by which these young children in Southeast Asia, fathered by U.S. citizens, will be able to come to this country.

Mr. FISH. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the Senate bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by inserting at the end thereof the following new subsection:

"(h)(1) Any alien claiming to be an alien described in paragraph (2) of this subsection (or any person on behalf of such an alien) may file a petition with the Attorney General for classification under section 201(b), 203(a)(1), or 203(a)(4) as appropriate. After an investigation of the facts of each case the Attorney General shall, if he has reason to believe that the alien is an alien described in paragraph 2 of this subsection, approve the petition and forward one copy to the Department of State.

and more in international trade. Just recently, we were advised that of the jobs created in this country over the last 10 years, fully one-third of all the new jobs have been created through exports.

I observe further, Mr. President, that enactment of this bill today is particularly timely in view of August's record $7 billion trade deficit. If we continue to run at that rate for a 12-month period, that will result in an $84 billion trade deficit. That is clearly something that this country cannot afford.

Mr. President, I would be remiss if I did not thank a number of people who have worked very, very diligently on this bill and on the conference report. First, I am deeply grateful to the chairman of the Committee on Banking, Housing, and Urban Affairs (Mr. GARN) for the total cooperation he has given in this matter. He has, as chairman of our committee, scheduled the necessary hearings and markups expeditiously. He has been immensely supportive of the legislation, of which he, himself, is an original cosponsor.

I thank Senator RIEGLE, the ranking minority member on the committee who has, at every turn, supported the legislation fully, has worked to make it better, has offered prefecting amendments. This bill could not have been as good a bill as it is today without his determined help.

I am especially grateful to Senator THURMOND, who has been extremely helpful in understanding the nature of this bill. He has done a superb job in counseling us in our deliberations with the Judiciary Committee on the House side.

Mr. President, there are many others I could and should thank on this. Senator BRADLEY has made an important contribution. As much as anyone else, Senator STEVENSON, who was one of the prime movers of this bill in the last Congress, deserves our thanks and congratulations. I would be remiss in those particular instances if I did not point them out. Of course, without the help of all the members of the committee, we would not have this excellent bill before us today.

Mr. GARN. Will the Senator yield?

Mr. HEINZ. I am happy to yield.

Mr. GARN. The distinguished Senator from Pennsylvania is overgenerous. I appreciate the lavish praise, but I think the record should be set straight that I had very little to do with this bill except stay in the background. Senator HEINZ has totally taken this over from the beginning, last year and this year. He deserves 99 percent of the credit for this bill, about to become law within a few days if it survives the House.

Again, I appreciate his praise, but it is vastly overstated in view of the time and effort that he, himself, has put in through his service as chairman of the International Finance Subcommittee of the Banking Committee.

Mr. HEINZ. Mr. President, I thank the distinguished Senator from Utah. I reserve the remainder of my time.

Mr. RIEGLE. Mr. President, I thank the Senator from Pennsylvania for his kind comments and most gracious words. I commend him for his exceptional leadership on this effort and for his success in bringing it to a conclusion today.

The adoption of the Export Trading Company Act marks the happy conclusion of more than 3 years of congressional consideration of legislation to encourage the formation and operation of export trading companies. The first bill on the subject was introduced in August 1979 by the former Senator from Illinois, Adlai Stevenson, who chaired the International Finance Subcommittee at the time.

The legislation has enjoyed wide bipartisan support in the Senate from its introduction. The distinguished current chairman of the International Finance Subcommittee, the senior Senator from Pennsylvania, Mr. HEINZ, was an early and avid supporter of this legislation, and it has been carried to consummation in this Congress under his leadership.

I, too, was an early cosponsor of this legislation in both the 96th and 97th Congresses, and am delighted to support adoption of the conference report. I believe the Export Trading Company Act can significantly expand U.S. exports and, thereby, U.S. jobs. Banks will have an opportunity to invest in export trading companies through bank holding companies. Antitrust concerns can be clarified for all exporters under procedures established in the act. The Commerce Department and the Export-Import Bank are directed to give particular attention to the promotion of exports through U.S. export trading companies.

Mr. President, this legislation has been carefully considered. There have been dozens of days of hearings over the past 3 years on this bill or earlier versions of it. The legislation has passed the Senate twice by unanimous rollcall votes. The conference report is the product of arduous negotiations involving several committees in the House and the Senate. The legislation is supported by the present administration, as it was by President Carter and his administration.

I urge adoption of the conference report. Our growing trade deficit leaves no room for further delay in providing U.S. producers with new opportunities to expand exports.

Mr. PROXMIRE. Mr. President, I support this conference report.

The legislation before us would authorize the establishment of export trading companies by bank holding companies and provide for antitrust clearance for such trading companies and exporters under the jurisdiction of the Justice Department's Antitrust Division and the Commerce Department.

Similar legislation has passed the Senate twice before. I voted in favor of the Senate-passed bills with substantial reservation. When those bills went to the House, the House Banking and Judiciary Committees did an outstanding job of refining the Senate bill. My hat goes off to Chairman ST GERMAIN and Chairman RODINO.

This legislation will place administrative responsibility for the banking sections where it belongs: in the Federal Reserve. No antitrust clearance will be given without the concurrence of the Justice Department.

I believe we have achieved a balance in this bill between the need to provide legislation to encourage exports and the need to provide strong provisions to prevent unsafe unsound banking practices or violations of our antitrust laws.

We all hope very much that this legislation will increase our exports, particularly among small- and medium-sized businesses.

Mr. President, the International Finance Subcommittee of the Banking Committee has worked long and hard on this legislation. The legislation could not have been accomplished without the hard work of Senator HEINZ and his willingness to compromise.

I commend this legislation to my colleagues.

Mr. RIEGLE. Mr. President, I yield back the remainder of the time on this side of the aisle.

Mr. HEINZ. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Pennsylvania has 2 minutes, 45 seconds.

Mr. HEINZ. Mr. President, I want to make one last comment. We are nearing passage on this major jobs bill. When it passes the Senate, it will go to the House. The House, at this moment, is still engaged in their debate on the so-called balanced budget constitutional amendment. At the conclusion of that debate, there will then be an opportunity for the House to take up this bill and pass it.

Over in the House, too, this has been a very bipartisan bill. It has been championed by Representative ST GERMAIN, chairman of the House Committee on Banking; it has been championed by DON BONKER, of Washington, chairman of the House export task force.

It has been acted on favorably by the House Foreign Affairs Committee, where Chairman ZABLOCKI has lent his total support to this bill. The chairman of the House Judiciary Committee, Congressman RODINO, has been incredibly helpful in facilitating passage.

I not only hope that the House passes this bill tonight, but I urge all Members in the House who have supported this bill to do everything in their power, including Speaker O'NEILL, who I know strongly favors this bill, to facilitate its passage. We

have waited nearly 4 years to get this bill through the legislative process. It was President Carter's highest international trade priority, but it did not make it. I hope it makes it this time. The Senate has done its duty once again. I commend all my colleagues.

Also, as I mentioned, the Senator from New Jersey (Mr. BRADLEY) has been very supportive of this legislation from the time he arrived in the Senate.

I hope the the House is as supportive there as we are on this side.

Mr. President, I see no Senator requesting time. I yield back the remainder of my time.

The PRESIDING OFFICER. Do both sides yield back their time?

Mr. RIEGLE. All time has been yielded back.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. RIEGLE. I move to reconsider the vote by which the conference report was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMENDATION OF SENATOR MATTINGLY

Mr. NUNN. Mr. President, I want to commend the junior Senator from Georgia, who is in the chair, for his extraordinary service to the Senate. I think he is well deserving of the award and all the accolades that were stated by the majority leader a few minutes ago. I would like to identify myself with the majority leader's remarks.

Also, I might say that it is comforting to know that anytime I need to converse with the junior Senator from Georgia, I can always find him in the chair. It is a very convenient arrangement.

However, I do, in all sincerity, congratulate him for his extrordinary service to the Senate.

The PRESIDING OFFICER. The Chair thanks the senior Senator from Georgia.

VIRGIN ISLANDS SOURCE INCOME AND DISABILITY PROPOSAL—H.R. 7093

Mr. BAKER. Mr. President, if I could have the attention of the distinguished chairman of the Finance Committee, the distinguished ranking minority member and the Senator from Maine, I wonder if the Senator from Kansas would be prepared at this time to establish the status of H.R. 7093, the Virgin Islands source income and disability proposal.

I yield to the Senator, Mr. President.

Mr. DOLE. Mr. President, I ask unanimous consent that we might move to the consideration of H.R. 7093.

Mr. LONG. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE and Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I wonder if the Senator from Louisiana will withhold so the Senator from Maine might have a brief discussion on that.

Mr. LONG. Mr. President, I am more than willing to withhold my objection with the understanding the Chair will recognize me so that I might object after this subject is discussed.

Mr. DOLE. Mr. President, let me just say one thing. There is a section of this bill that is controversial. Part of it is not.

H.R. 7093 would reduce to 10 percent the 30-percent withholding tax withheld at source by U.S. Virgin Islands payers of certain Virgin Islands source passive investment income when the recipient is a U.S. individual or corporation.

The bill would allow the Virgin Islands government to further reduce the 10-percent rate at its discretion.

It is not that particular provision that is in controversy. The provision that is in some—I do not say controversy, but there is some question about it—the provision relates to the social security disability insurance; and I yield to the distinguished Senator from Maine so that he may address the question of the Senator from Louisiana.

Mr. COHEN. Mr. President, I thank the Senator from Kansas for this opportunity to discuss an amendment that was offered by Senator LEVIN and me and others. In fact, it is an amendment that was cosponsored by Senators DOLE, ARMSTRONG, HEINZ, RIEGLE, DURENBERGER, METZENBAUM, BIDEN, BOREN, BURDICK, CANNON, CHAFEE, COCHRAN, CRANSTON, DIXON, LEAHY, PELL, SASSER, STAFFORD, QUAYLE, and DODD.

The purpose of our proposal is to provide immediate relief to the thousands of disabled individuals whose benefits are being erroneously terminated and subsequently restored after a lengthy appeals process has run its course. Our legislation also would slow down the rate of reviews so that these disability investigations may proceed at a more measured pace.

In response to a congressional mandate, the Social Security Administration has been reviewing the eligibility of hundreds of thousands of individuals with nonpermanent disabilities. In my judgment, Congress was correct in mandating periodic reviews to identify those individuals who have recovered sufficiently to be able to resume working. The implementation of this law, however, has created chaos and inflicted pain that Congress neither envisioned nor desired when it enacted what was intended to be a sound management tool. And we in Congress share a large measure of responsibility for failing to establish specific guidelines for selecting the cases and conducting the investigations.

On May 25, Senator LEVIN and I held a hearing in our Oversight of Government Management Subcommittee to investigate numerous reports from all over the country that truly disabled people were having their benefits terminated. What we found was most distrubing. Benefits were being discontinued in more than 40 percent of the cases reviewed—far above the 20-percent rate originally predicted by the General Accounting Office. Yet, more than two-thirds of the claimants who appealed were eventually reinstated to the program after a hearing before an administrative law judge. The tragedy is that in waiting for reinstatement these severely disabled persons and their families must go without benefits for many months—or even a year—due to the tremendous backlog of cases.

Witnesses at our hearing recounted case after case in which truly disabled individuals lost their benefits and suffered financial hardship and emotional trauma because of an unjust system. Our hearing revealed a disturbing pattern of misinformation, conflicting standards, incomplete medical examinations, inadequately documented reviews, bureaucratic indifference, erroneous decisions, financial and emotional hardships, and an overburdened system.

Rectifying such fundamental deficiencies will require comprehensive legislation, and I applaud Senator DOLE for his willingness to thoroughly review the disability program. It will, however, take time for Congress to effect the needed changes in the disability review process. In the interim, it is essential that we act to provide immediate relief to the disabled individuals whose benefits are being terminated and then reinstated, and to slow down the reviews so that they may proceed more rationally.

Our legislation has two parts: First, it would direct the Secretary of Health and Human Services to determine on a State-By-State basis the appropriate volume of reviews. Second, it would continue disability payments until the administrative law judge stage of the appeals process. Both steps could be easily and quickly implemented.

Slowing down the number of cases reviewed would help both claimants and the State agencies which conduct the investigations. Currently, case files are literally overflowing out of boxes,

of its traditional authorization and appropriation committees. If the Congress should concur with the dismantling of the Department of Energy, this committee will conduct full and complete oversight hearings on this program and will carefully evaluate the transfer of the RERTR program at that time to ACDA.

The amended bill deleted a provision in the House bill which would have changed the name of the agency to the "Arms Control Agency." The members of both committees felt that this was not a propitious time to change the name of the agency and concurred with the Senate on this program.

Finally, H.R. 3467 as amended, included a Senate provision which encourages the Director of ACDA to pursue research, development, and other studies in anticipation of negotiations on antisatellite activities. This is a highly desirable inclusion to the House bill and was fully supported by my colleagues.

In conclusion, Mr. Speaker, each Member should carefully consider the ACDA authorization in the context of the increased attention and public interest in arms control matters. The bill before us, H.R. 3467 as amended, enables the arms control agency to carry out its responsibilities over the next 2 fiscal years in a fiscally responsible and effective manner. At a time when the President has finally resumed negotiations on limiting strategic arms, this Congress must wholeheartedly endorse the authorization for the agency responsible for such a complex and difficult task.

In brief, Mr. Speaker, I would like to reemphasize that this bill is noncontroversial and was passed by the House on June 8, 1981, by a unanimous voice vote. Furthermore, it has enjoyed complete bipartisan support. I would like to also pay tribute to the ranking minority member of the committee, my colleague and very good friend, the gentleman from Michigan (Mr. BROOMFIELD) for his continued support for this measure and my deep appreciation to him for his assistance.

● Mr. BROOMFIELD. Mr. Speaker, the legislation we have before us today provides the Arms Control Agency with an authorization of appropriations which will allow the Agency to improve nuclear safeguard programs, support verification and monitoring activities, provide research in nuclear nonproliferation, and, most importantly, sustain critical arms control negotiations. Now that the President and his negotiators are involved in the limitation of strategic nuclear weapons, it is my hope, as well as Chairman ZABLOCKI's that the Congress would especially support this authorization.

In particular, the bill, as amended by the Senate, encourages the Director of the Arms Control Agency to pursue research and development in regard to possible arms control negotiations concerning antisatellite activities. Also, the legislation recommends that money be spent in support of the Agency's verification and monitoring activities which are crucial to verifying arms control treaties.

In this regard, I believe that the bill contributes to our national and international security, especially in the areas of arms control verification and nuclear nonproliferation, and I urge my colleagues to support the legislation.●

Mr. LOTT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent to revise and extend my own remarks, and that all Members may have 5 legislative days within which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

□ 2340

APPPOINTMENT OF CONFEREES ON H.R. 6946, FALSE IDENTIFICATION CRIME CONTROL ACT OF 1982

Mr. HUGHES. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6946) to amend title 18 of the United States Code to provide penalties for certain false identification related crimes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey? The Chair hears none and, without objection, appoints the following conferees: Messrs. RODINO, HUGHES, KASTENMEIER, CONYERS, GLICKMAN, SAWYER, FISH, KINDNESS, and HYDE.

There was no objection.

CONFERENCE REPORT ON S. 734, EXPORT TRADING COMPANY ACT OF 1982

Mr. BROOKS. Mr. Speaker, I call up the conference report on the Senate bill (S. 734) to encourage exports by facilitating the formation and operation of export trading companies, export trade associations, and the expansion of export trade services generally, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of today October 1, 1982.)

Mr. BROOKS (during the reading). Mr. Speaker, I ask unanimous consent that the statement be considered as read.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas (Mr. BROOKS) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. MCCLORY) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas (Mr. BROOKS).

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of the conference report on S. 734, the Export Trading Company Act.

I am pleased that the conferees agreed to inelude in this legislation most of the provisions of H.R. 5235, the Foreign Trade Antitrust Improvements Act. These provisions are, I believe, far more important to providing exporters certainty with respect to the antitrust laws than any certification procedure.

I also am pleased that the certification procedure agreed to by the conferees is a balanced one. It includes protection for the certified exporter—no treble damage suits may be brought against an exporter for conduct within the terms and conditions of a certificate—but it also protects competitors and consumers from injury caused by anticompetitive conduct.

The Attorney General retains his right to investigate conduct of certified exporters. The Attorney General may also require the Secretary of Commerce to revoke the certificate when the Attorney General determines that the conduct of the export association is not consistent with the standards set forth in the act. And when certified conduct threatens clear and irreparable harm to the national interest, the Attorney General may bring suit under section 15 of the Clayton Act to enjoin the conduct. Finally, a certified exporter remains fully subject to public or private suit for any conduct that falls outside the terms and conditions of the certificate.

Mr. Speaker, I urge my colleagues to support the conference report.

Mr. Speaker, I yield such time as he may consume to the distinguished chairman of the Foreign Affairs Committee, the gentleman from Wisconsin (Mr. ZABLOCKI).

(Mr. ZABLOCKI asked and was given permission to revise and extend his remarks.)

Mr. ZABLOCKI. Mr. Speaker, I would first like to commend my fellow committee chairmen—Mr. RODINO of the Judiciary Committee and Mr. ST GERMAIN of the Banking Committee—for their diligence in moving this legislation through their committees and through the conference committee. I should also recognize the efforts of the House author of the legislation, Representative DON BONKER, and of Representative JONATHAN BINGHAM, who has shepherded the legislation through his subcommittee and through the full Foreign Affairs Committee.

The Export Trading Company Act takes important steps toward giving the appropriate priority to encouraging exports through clarifying the antitrust laws with respect to export trade associations and by permitting bank participation in export trading companies.

This legislation will not solve the unemployment problem in the United States. In the short-run it will not even make a dent in our 10-percent unemployment rate. But, in the long-run, if the business community takes advantage of the opportunities offered by this act, it could play a significant role in increasing U.S. exports and thereby contributing to the U.S. balance of trade and to domestic employment.

The State of Wisconsin sees this legislation as a useful mechanism to bring small- and medium-sized firms in my State into the exporting field; the same potential exists in many other States.

I urge the Members to support this conference report which represents a reasonable approach to encouraging the formation of export trading companies and associations.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. LAFALCE) on behalf of the Committee on Banking, Housing and Urban Affairs.

(Mr. LAFALCE asked and was given permission to revise and extend his remarks.)

Mr. LAFALCE. Mr. Speaker, I rise in support of the conference report on S. 734, the Export Trading Company Act of 1982. In the interest of time, I will limit my remarks to title II of the conference report. This title sets out the involvement of banking institutions in export trading company activities.

Mr. Speaker, as adopted by the conferees, title II is virtually identical to the House backed bill, which after extensive hearings and full participation by committee members, was reported out by a vote of 40 to 0 and passed the House on July 27, by voice vote. I am pleased that the conferees accepted the provisions of the House passed act virtually without change.

A primary concern of the House Banking Committee was how the traditional separation of banking from commerce could be breached without undue risk to participating banking institutions and at the same time provide a reasonable incentive for either bank investment in or ownership of export trading companies. The conferees adopted the concept of H.R. 6016 by insulating the risk to banks by the use of the bank holding company structure. In this way we insured a continuing regulatory presence through the Federal Reserve Board, minimal but fully adequate.

Mr. Speaker, on May 8, 1980, I introduced the first export trading company legislation. My goal then was, as it is now, to see legislation signed by the President that would make a healthy start at addressing the problems of our trade imbalance. This legislation is designed to provide new export opportunities for small and medium sized businesses and in so doing create new jobs for communities across the Nation. The magnitude of the possibilities of this bill are reflected in a study conducted by Chase Econometrics that estimates that by 1985, export trading companies could increase GNP by $27 to $55 billion, increase employment by 320,000 to 640,000 workers, and reduce the Federal deficit by $11 to $22 billion. These figures take on an additional dimension with the report this week that August figures show a record $7.1 billion deficit in our merchandise trade balance. The deficit reflects a 20.2 percent increase in imports and a 2.9 percent drop in exports. While the ETC bill is not meant as a panacea for this country's formidable export problems, it is a very important step toward formulating and implementing a comprehensive export promotion policy.

In order to meet the goals of this legislation it is essential that the newly formed trading companies are truly export trading companies. As author of the original export trading company legislation, I stressed the meaning of export by requiring companies formed under the provisions of the bill to operate principally," for purposes of exporting goods or services produced in the United States or for purposes of facilitating the export of goods or services produced in the United States. By "principally" I meant that trading companies refrain from importing except when essential to a particular contract for export. Use of the word "principally" recognizes that ETC's will have to, on occasion, engage in importing, barter, third party trade and related activities in order to gain access to export opportunities. In most instances, this occasional importing shall be incidental to and necessary to effectuate the primary export transition.

I want to make it very clear that my intent in introducing and supporting the ETC bill is that companies are formed in such a way as to promote the exclusive purpose of the legislation: Export promotion. It is intended that the great preponderance of ETC activity will not require importation of goods and services, and that the total annual dollar volume of U.S. exports arranged by ETC's will vastly exceed the total annual dollar volume of imports so arranged. An export company is not one that receives 49 percent of its revenues from import activities; it is not one that receives 30 percent, or 20 percent, or even 10 percent of its revenues from importing. An export company is one that imports only when importing is incidental to and necessary for an export effort.

Mr. Speaker, I plan to make it my mission to follow the formation of ETC's, to study the results of their operation, and to analyze the relationships that develop between the export and import of goods or services by ETC's. There is no question that should I find that trading companies are promoting importing or import services, I will be back on this floor demanding a revocation of the privileges contained in the bill now before us. Too much rests on efforts in this country to improve our export performance—too much to allow the creation of a vehicle to allow individual profiteers to ignore the intent of this legislation.

As a longtime supporter of the concept of trading companies, I am happy to see the fruition of the efforts of many people spending many hours to bring us to the point of final approval of this legislation. I am privileged and grateful to have been able to work with so many, as we have, in a strong spirit of bipartisan cooperation. We are all looking forward to the purpose and fruit of this legislation—enhancement of national exports and jobs for American workers.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. BINGHAM).

(Mr. BINGHAM asked and was given permission to revise and extend his remarks.)

Mr. BINGHAM. Mr. Speaker, the Export Trading Company Act of 1982, which at last is before us for final approval, is a worthwhile piece of legislation which should be helpful both to industry and labor by improving our ability to export. With exports, of course, come jobs, and so this legislation can contribute in a small way at least to the economic recovery for which we all are striving.

Companies which produce not goods themselves but which specialize in marketing goods and services in foreign markets are essential to effective exporting, and exports in turn are essential to a strong U.S. economy. The fact is that foreign markets—particularly those in the developing countries—are generally growing and expanding more rapidly than our own. To the extent that we fail fully to take

advantage of those markets we restrict our own economic growth and employment. These markets are varied and complex. They require imaginative marketing, financing, and other services to penetrate. Even many large and well-staffed firms do not have sufficient expertise to penetrate the wide variety of foreign markets. Other firms are too pressed and preoccupied with meeting domestic demand to concentrate attention and resources on foreign markets.

Effective export trading companies are a useful stimulant to the export side of the economy. They can provide a real service to American manufacturers and distributors who are not otherwise able fully to explore and meet foreign market demands.

To be effective, export trading companies particularly need financing, both to meet their own overhead, which in this age of computers and telecommunications can be considerable, and to finance inventories and sales. The major contribution of this legislation, I believe, is in making it easier for export trading companies to obtain bank financing through actual bank investment in such companies. Through the very careful efforts of the members of the congressional Banking Committees, that result has been achieved very effectively in this bill without endangering the financial stability of the banks themselves, and therefore with minimum risk to depositors. Investment is limited to bank holding companies, bankers' banks, and the Edge Act corporations which are subsidiaries of banking holding companies. Such entities, however, have the kind of capital that is needed to better finance trading company operations, and this legislation provides both the legal authority and the encouragement in the form of congressional endorsement of such bank investments. I hope that the banking community will take full advantage of the possibilities provided here.

It is important to point out, too, Mr. Speaker, that other firms with access to large amounts of capital, like insurance firms and manufacturers themselves, may be in a good position to invest in trading companies. This legislation does not deal with that because there are not the kinds of legal prohibitions to such investments as there have been with respect to bank investment.

This bill, Mr. Speaker, is not a panacea for our export trade deficit. It cannot overcome the effects of unwise U.S. Government policies which lead to recession and a near depression in the U.S. economy and, in turn, to much of the rest of the world. When the U.S. economy is as severely depressed as it is today, foreign markets become as slack as our own, and other developed countries with whom we compete in international markets are pressed to offer subsidies and other export incentives which we are reluctant to provide to U.S. firms. In such circumstances, it takes much more than effective trading companies to improve our export balance. It will take fundamental changes in our national economic policies—changes that will bring interest rates down, stimulate consumer confidence, and generally restore jobs and business expansion in our own economy. Only then will world markets revive and offer needed opportunities for sales which trading companies can be effective in meeting.

Mr. Speaker, I take some pride in the fact that the subcommittee which I have the honor to chair, the Subcommittee on International Economic Policy and Trade of the House Foreign Affairs Committee, was the first committee in the House to take favorable action on this legislation in both the 96th and 97th Congresses. Several members of the subcommittee took a strong interest in the legislation, but particularly the gentleman from Washington (Mr. BONKER) who has worked tirelessly to bring this legislation to enactment. I urge the House to adopt this conference report. It represents a workable compromise between the Senate and House bills, which has been worked out among several committees, and is fully supported by the Committees on Banking, Judiciary, and Foreign Affairs. I urge adoption of the conference report on the Export Trading Company Act of 1982.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts (Mr. FRANK).

(Mr. FRANK asked and was given permission to revise and extend his remarks.)

Mr. FRANK. Mr. Speaker, I am pleased to rise in strong support of the Export Trading Company Act of 1982.

This has been one of my highest legislative priorities in this Congress. We need to keep American exports competitive in a world economy which has changed drastically in the last few years. Small businesses, in particular, have been placed at competitive disadvantage by new international trade realities.

This is a very sensible and practical measure which will allow, in a very reasonable way, businesses to work together to promote and enhance American export trade. It is a very wise use, I believe, of our antitrust laws. It is very sound legisation which, I hope, will spur new economic growth and with it, business activity and jobs.

I urge my colleagues to support this vital legislation.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington (Mr. BONKER.).

(Mr. BONKER asked and was given permission to revise and extend his remarks.)

Mr. BONKER. Mr. Speaker, I rise in support of this legislation.

The Export Trading Company Act will allow the formation of Japanese-style export trading companies.

The Department of Commerce has estimated that there are 20,000 firms in this country that are prepared to export products and that they have a facility to do so.

Chase Econometrics has estimated that this bill will create anywhere between 320,000 to 640,000 new jobs. If we are going to experience economic recovery, we have to have a more aggressive export program. This bill will help accommodate that goal.

I would like to commend the chairman of the full Committee on the Judiciary, Mr. RODINO, for his cooperation, and the chairman of the Subcommittee on Foreign Affairs, Mr. BINGHAM, and the others who have had a great role in bringing this conference report to the floor today.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia (Mr. BARNARD).

(Mr. BARNARD asked and was given permission to revise and extend his remarks.)

Mr. BARNARD. Mr. Speaker, I would like to engage in a colloquy with the gentleman from New York (Mr. LAFALCE) pertaining to some of the language in the conference report.

The Export Trading Company Act amends the Bank Holding Company Act, but mention is made in the bill of bankers' banks and Edge Act corporations also. Is my understanding accurate that bankers' banks, Edge Act corporations, and bank holding companies are all subjected to identical approval, examination, supervision, and regulatory treatment for purposes of export trading company investments?

Mr. LAFALCE. Mr. Speaker, will the gentleman yield?

Mr. BARNARD. I yield to the gentleman from New York.

Mr. LAFALCE. That understanding is absolutely and completely correct.

Mr. BARNARD. Mr. Speaker, today we are completing action on a landmark legislative effort that will both provide hundreds of thousands of new jobs, and begin to adapt financial institutions to the changing marketplace.

The credit for this advance must go to the chairman of the Banking Committee, Mr. ST GERMAIN, who took a stalled effort and guided it to completion. Through his leadership, we are here today to allow American companies to compete in export markets on an equal footing with foreign companies.

Export trading companies will be major vehicles for presenting American goods and services to the world markets. Although American companies have always exported, we have not had any real policy to encourage exports. Instead, we have often inadvertently made it more difficult to export. As a result, our overseas sales, while significant, have not been as great as they should be. Many commerical opportunities that would have

provided jobs for the unemployed, new industries for blighted areas, and incentives to innovate because there was no vehicle for smaller firms to use to increase foreign sales.

Export trading companies will fill this void. They will be able to provide services to the smaller and medium-sized exporter that are currently available only to huge corporations. Utilizing the expertise and foreign presence of banks, they will be able to package export services ranging from marketing surveys to finding buyers, from arranging shipping to product modification, and from financing payment to arranging barter transactions. In all cases, these are services that presently are available only to those exporters who are able to devote the time and money to search them out.

I am proud to say that S. 734 contains a provision that I originally introduced, expanding the limitations on bankers acceptances. Since Congress created the U.S. acceptance market in 1913, they have become an essential part of financing trade. However, the law this body passed almost 70 years ago has not been significantly revised since then.

One of the major revisions has been to place all banks, foreign and domestic, on an equal footing and under the same legal requirements. This means that a foreign-owned bank doing business in this country will not have an unfair advantage in this market, as they too will be covered by this law. For the first time, they will also be subject to the limitations of this act, which will be based on their worldwide capital and surplus, just as it is for a domestic bank.

Under the language of this bill, acceptances will for the first time be available to smaller and medium-sized exporters. In the past, the restrictions on the amount of acceptances that could be outstanding limited them to only the largest exporters, but in this legislation, we have increased the amount that can be outstanding. As a result, smaller firms will, for the first time, have access to this low-cost form of export finance.

Even more importantly, for the first time, we are allowing smaller banks to offer their customers access to export financing. They will be able to both purchase shares of any acceptances issued in behalf of their larger customers, and to originate them for their smaller customers through the mechanism of acceptances.

This committee has worked long and hard to come up with the best way to give these banks and exporters access to this type of trade financing, and has allowed them to be participated through other banks. We have been very specific about how these acceptances should be written, and have come to the conclusion that only the name of the issuing bank needs to be placed on the acceptance.

As this conference report states, we did not do this to impinge or restrict the inherent powers of the Federal Reserve to prevent circumvention of these requirements through imprudent use of acceptances. However, we have also made it very clear that we will not accept either regulatory or other restrictions that would unduly limit the use of bankers acceptances and participations by the widest number of American banks.

This means that we expect the method detailed in the House report on H.R. 6016 to be implemented without major regulatory interference. We make note of the study being conducted by the Federal Financial Institutions Regulatory Council, and if, after a period of actual use, there are problems with this method, we expect them to report to us any individual regulatory action that would affect the general use of participations before it is taken, except for major emergencies.

In my own personal view, this expansion of acceptance financing will prove a major advance for thousands of small and medium-sized exporters. By making them available through smaller banks, we are confident that the cost of exporting will be lowered, and that exporters will be able to increase sales and employment.

Mr. Speaker, this legislation is a major beginning not only in expanding foreign trade, but in modernizing our system of financial institutions. However, much else remains to be done next year. For far too long, banks and thrifts have been unable to give their customers the services they need and desire because of outdated laws of another era. We took another major step already today by providing assistance to thrift institutions.

However, we cannot afford to sit back now and think that we have completed our work. There is still a great deal to do in the next Congress. We still need to reexamine outdated legislation such as the Glass-Steagall Act. This bill is a major step along a road that we still have many miles to travel on.

This act, S. 734, is a major step to both increasing foreign trade and to allowing financial institutions to compete, and I urge my collegues to support it.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. SEIBERLING).

(Mr. SEIBERLING asked and was given permission to revise and extend his remarks.)

Mr. SEIBERLING. I thank the gentleman.

I would like to say first of all that this is a very important bill and, what is more, it represents a major departure from the scheme of the antitrust laws that have been in effect now since 1890.

While I will support this legislation, I think Members ought to understand what it does. It may well be that it will help our export trade and on that basis the Judiciary Committee reported it out and we are now considering the conference report.

However, the other body made some changes in it which I think need to be explained and basically what we have done is to say that a group that wants to form a trading company for export trade must apply to the Secretary of Commerce who must, with the concurrence of the Attorney General, certify that that company meets four standards that are set forth in section 303 of the bill.

The problem I have with this is that those four standards are not the same as the antitrust laws; namely, the Sherman Act, the Clayton Act and the Federal Trade Commission Act. Therefore there might be some construction that maybe a trading company does not need to get a ruling that the antitrust laws, as amended by other provisions of this bill, actually apply but merely that these four standards must be met.

Those may be somewhat different in particular situations than the antitrust laws and might produce injury to other businesses that are in the export trade.

The bill goes on to say that if a person is injured but the injury is within the scope of the certificate which must conform with the four standards then, instead of being able to collect treble damages under the antitrust laws for the injury sustained, that competitor can only obtain single damages plus attorneys' fees and court costs.

So this is a very significant departure from the scheme of antitrust laws that has stood us in good effect for over three-quarters of a century.

I just want everyone to understand that.

I would now like to engage in a colloquy with the acting chairman in order to clarify what I think is a needed clarification in this legislation. If you will bear with me for just a minute I will do that.

Will the gentleman continue to yield for that purpose additionally?

Mr. BROOKS. I certainly yield to my friend from Ohio.

Mr. SEIBERLING. I would like to ask the acting chairman about the intent of section 306(b)(1) of the bill which reads as follows:

> Any person who has been injured as a result of conduct engaged in under a certificate of review may bring a civil action for injunctive relief, actual damages, the loss of interest on actual damages and the cost of suit, including a reasonable attorney's fee for the failure to comply with the standards of section 303(a). Any act commenced under this title shall proceed as if it were an action commenced under section 4 or section 16 of the Clayton Act except that the standards of section 303(a) of this title and the remedies provided in that paragraph shall be the exclusive standards and remedies applicable to such action.

□ 2350

Mr. SEIBERLING. I thank the gentleman.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. SHAMANSKY).

(Mr. SHAMANSKY asked and was given permission to revise and extend his remarks.)

Mr. SHAMANSKY. Mr. Speaker, I would like to follow up with the remarks made by the gentleman from Ohio and point out that when the Secretary of Commerce testified before our International Policy and Trade Subcommittee of the House Foreign Affairs Committee I asked him if the law was intended to exempt a certificate holder from the operation of the antitrust laws within this country, if they should happen, shall we say, slop over some overseas activities, and he said, oh, that was not the intent at all. His general counsel also said the same thing.

In fact, it seems to me we have a major revision. And if there are other lawyers in this House besides me, you have a prescription for getting around the antitrust laws—get one of these certificates. And what you do internally, within the United States, is down to single damages instead of treble damages.

I think we have to understand that this really is not vital or necessary to the export trading aspect. The pretext for the bill is to permit these companies to operate overseas without having our domestic antitrust laws apply to them overseas.

Unfortunately, what we have here is a license to violate the antitrust laws within the United States, and the penalty would only be single damages.

Mr. BROOKS. Mr. Speaker, I reserve the balance of my time.

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, as is typical in most House-Senate conference agreements, there is some give and some take. This is true of the antitrust provisions of S. 734, the Members of this body will be pleased to hear that most of the provisions of H.R. 5235, the Foreign Trade Antitrust Improvements Act, were included in the very form passed by the House on August 3, 1982. The one fatality was the provision exempting joint ventures limited to export trade and foreign trade from coverage of section 7 of the Clayton Act. I regret the loss of this provision, which I attribute more to our hurried conference negotiations than to insuperable substantive objections on the part of the Senate. I hope that this issue can be addressed at some future time.

But we can be pleased that we did win provisions directly amending the Sherman Act and the Federal Trade Commission Act to place jurisdictional limits on these laws so that they will not apply to our export trade or to purely foreign trade unless the conduct in question has a "direct, substantial, and reasonably foreseeable" anticompetitive effect on our domestic commerce or on the commerce of exporters in the United States. These provisions will benefit all American exporters whether or not they apply for certification.

The compromise certification procedure contained in the conference agreement is good legislation. While the House had placed this procedure in the Department of Justice, the compromise agreement places the procedure in the Department of Commerce but retains veto authority in the Department of Justice. This veto authority was very important to the House since the matters to be decided when an exporter applies for a certificate of review are essentially antitrust matters. The arrangement agreed upon in conference thus gives the primary administrative responsibility to the Department of Commerce without interfering with the mission of the Department of Justice to enforce the antitrust laws.

The most important issue regarding the antitrust title of S. 734 concerned remedies to be accorded persons injured by certified conduct. The normal rule is that victims of antitrust violations are accorded treble damages. The Senate version would have accorded zero damages to an injured party—even to a U.S. exporter, even to a U.S. exporter holding a certificate of review. The House version itself was a compromise, according the injured party single damages plus interest in lieu of treble damages for a violation of the antitrust laws.

The conference agreement retains the House version on single damages but does not retain the standard of the "antitrust laws" as such. Instead, it adops the Senate approach of substituting specific standards for the general "antitrust laws" standard. But I wish to assure the Members of the House that these specific standards, four in number, which are contained in section 303(a), in no way compromise the purpose of the House version.

First of all, the joint statement of managers makes clear that the general "antitrust laws" standard of the House version is contained within the four specific standards agreed to. The difference is that the specific standards are easier to understand and—this is important—they are broader than the general "antitrust laws" standard. Thus under the conference agreement, single damages could be assessed against a certificate holder for the reintroduction in this country of exported goods. While such reintroduction may, in fact, be procompetitive and, thus consistent with our antitrust laws, a court could find that this violates the fourth standard of section 303(a) and could subject the violator to single-damage liability.

Also, it should be noted that the third standard embraces unfair methods of competition. Today, damages cannot be awarded for violations of this standard—a standard generally agreed by antitrust experts to be broader than the provisions of the Sherman Act, for violations of which damages do lie. Under the conference agreement, certificate holders are subjected to this broader standard.

Finally, it should be noted that the first and second standard may also be broader than antitrust prohibitions. For prices may be enhanced and competition may be lessened, even substantially, without necessarily violating the antitrust laws. The terms of these two standards are not exact antitrust terminology and thus some period of refinement will be necessary. But with respect to all four of them, the House should be assured that they are at least as broad in their coverage as the antitrust laws. How much broader, the Antitrust Division, the Commerce Department, and the courts will have to hammer out over time.

Since the conferees agreed to adopt these four specific standards in lieu of the general "antitrust laws" standard, it was necessary to adopt other provisions to make clear that the disposition of these cases, which will otherwise be antitrust cases, proceed on the same procedural basis as antitrust cases. It was also necessary to make clear the applicability of the Antitrust Civil Process Act to possible antitrust violations of the section 303(a) standards.

Other minor changes were made. But, in general, the compromise agreement follows the format of the House version. The House position has been ably defended in conference. The four antitrust conferees voted for the House bill signed the conference report. I recommend that this report be adopted. I am confident that this legislation will greatly facilitate the growth of U.S. export trade.

Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. LAGOMARSINO).

(Mr. LAGOMARSINO asked and was given permission to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, I wish to emphasize my strong support for this legislation, S. 734.

The Congress has been studying the concept of export trading companies for years. It is a momentous occasion to finally have legislation to make it a reality.

I believe export trading companies, as promoted by this legislation, will greatly encourage small and medium-sized businesses to pool their resources and expertise to take advantage of the thousands of overseas markets where there is demand for American products. Since these firms would not be able to export on their own, or have been reluctant to do so, the incentives

offered in this bill of banking participation and greater certainty in being able to act under U.S. antitrust laws should increase America's export capability and, at the same time, increase the number of jobs available for Americans.

I strongly support the provisions of S. 734 which are designed to promote the development of exports of American goods and services. I am pleased we have finally concluded the lengthy and arduous process of consideration of this legislation and can now get on with the actual realization of its merits. I withdraw my objection.

Mr. McCLORY. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. CLAUSEN).

(Mr. CLAUSEN asked and was given permission to revise and extend his remarks.)

Mr. CLAUSEN. Mr. Speaker, I rise in strong support of this Export Trading Act legislation now pending before this House. It is timely. It is comprehensive and I believe it could be one of the more significant pieces of legislation we will pass in this Congress.

The basic thrust of this legislation is to increase the job potential for all Americans through the promotion of exports.

For those of us who represent coastal communities and have harbor and port facilities, we have been advocating a more dynamic export policy as a means of promoting and enhancing our economic and social well-being.

Being from California, we are most anxious to promote exports and take advantage of the overseas markets of the Pacific Basin community.

The potential for bank participation in trading companies and the basic structure for groups desiring to form an export trading company is a major step forward and I am personally very excited about the ultimate free enterprise potential of this bill.

The President and the administration, the Secretary of Commerce strongly support this measure because, as I do, they see an unprecedented opportunity for the export of our farm products and also some of our small business entrepreneurs that have heretofore not been able to effectively participate or compete in the developing countries expanding markets.

This is a great day for America and I commend my colleagues on the committee for their efforts and thank them for the time and consideration they have given to me and my input.

I hope the legislation passes overwhelmingly.

Mr. McCLORY. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. WYLIE).

(Mr. WYLIE asked and was given permission to revise and extend his remarks.)

Mr. WYLIE. Mr. Speaker, I want to join my colleagues in strong support for this important measure. The chairman of our committee deserves a great deal of credit for devising a more workable approach to bank ownership of export trading companies than that devised by the Senate. It is a testimony to his hard work and understanding of this issue that the Senate accepted 90 percent of the House language for the bank ownership provisions.

I am very pleased that we are taking final action on this bill before we adjourn. This bill provides solutions to two of the most vexing problems facing our economy. On the one hand, it should lead to a dramatic increase in U.S. exports. Everyone should be aware that our trade imbalance reached an economic high only last month. On the other hand, this bill should provide important new job opportunities to American workers. The Commerce Department projects that every additional billion dollars in exports generates between 40,000 and 60,000 new jobs. The Department of Commerce estimates it could create 500,000 new jobs. All this at no cost to the taxpayer. This is the American free enterprize system to Government-subsidized export trade from other countries.

I commend the leaders from both sides of the aisle in our three House committees involved for their spirit of compromise and their hard work on this issue. I urge my colleagues to support the bill.

Mr. McCLORY. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska (Mr. DAUB).

(Mr. DAUB asked and was given permission to revise and extend his remarks.

Mr. DAUB. Mr. speaker, I rise in strong support of this act, particularly for its help for small business and for farmers.

● Mr. BROOMFIELD. Mr. Speaker, I wish to call to the attention of my colleagues the significant accomplishment represented by final approval of the export trading companies bill.

At a time when unemployment is a major concern for the Nation, this legislation is a welcome contribution toward increasing the number of jobs for Americans by increasing America's export capability.

Thousands of small- and medium-sized businesses have products and services which are in demand in overseas markets. But these American firms often do not have the capital or the experience to undertake export trade on their own. The export trading company legislation offers a solution to that problem.

Export trading companies will enhance the competitiveness of U.S. firms by providing a full range of export services, such as developing comprehensive market surveys, experience in developing new markets, established distribution networks and broadening of export risk due to the volume of business and the number of products. Moreover, U.S. exporters will now be able to draw on the resources and experience of the U.S. banking system.

With all the advantages export trading companies offer, I am confident America's export performance will improve and thousands of new jobs will be created for Americans. I am proud to support this legislation.●

Mr. McCLORY. Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no further requests for time, and I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

VICTIM AND WITNESS PROTECTION ACT OF 1982

Mr. BROOKS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2420) to protect victims of crime, with a Senate amendment to the House amendments, and concur in the Senate amendment to the House amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendment to the House amendments, as follows:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill, insert:

That this Act may be cited as the "Victim and Witness Protection Act of 1982".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that:

(1) Without the cooperation of victims and witnesses, the criminal justice system would cease to function; yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.

(2) All too often the victim of a serious crime is forced to suffer physical, psychological, or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system unresponsive to the real needs of such victim.

(3) Although the majority of serious crimes falls under the jurisdiction of State and local law enforcement agencies, the Federal Government, and in particular the Attorney General, has an important leadership role to assume in ensuring that victims of crime, whether at the Federal, State, or local level, are given proper treatment by agencies administering the criminal justice system.

(4) Under current law, law enforcement agencies must have cooperation from a victim of crime and yet neither the agencies